

ILLINOIS POLLUTION CONTROL BOARD

August 20, 2015

IN THE MATTER OF:)
WASTEWATER PRETREATMENT) R15-13
UPDATE, USEPA AMENDMENTS (July 1,) (Identical-in-Substance
2014 through December 31, 2014)) Rulemaking - Water)

Adopted Rule. Final Order. Deadline Extension.

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

SUMMARY OF THIS ACTION

The Board today adopts amendments to the Illinois regulations that are “identical in substance” to wastewater pretreatment and drinking water regulations adopted by the United States Environmental Protection Agency (USEPA). The amendments involved in this consolidated docket incorporate into the Illinois wastewater pretreatment regulations in response to one USEPA action. That action occurred in the identical-in-substance update period of July 1, 2014 through December 31, 2014. Specifically, the action was the August 19, 2014 adopted revisions relating to selection of Clean Water Act (CWA) (42 U.S.C. § 1251 *et seq.* (2013)) analytical methods. USEPA now requires the use of a “sufficiently sensitive” analytical method to measure each pollutant or pollutant parameter.

Sections 7.2 and 13.3 of the Act (415 ILCS 5/7.2 and 13.3 (2014)) require the Board to adopt regulations that are “identical in substance” to federal wastewater pretreatment regulations. The USEPA wastewater pretreatment rules implement Sections 307(b), (c), and (d) and 402(b)(8) and (b)(9) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. §§ 1317(b), (c), and (d) and 1342(b)(8) and (b)(9) (2013)). The federal wastewater pretreatment regulations are found at 40 C.F.R. 400 through 499. 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 (2014)) do not apply to the Board’s adoption of identical-in-substance regulations.

The Board will immediately file the adopted amendments with the Office of the Secretary of State, upon which filing the amendments will become effective. After filing, a Notice of Adopted Amendment will appear in the *Illinois Register* after the amendments have been filed.

The statutory due date for completion of the present amendments was August 19, 2015. As is explained below, the Board has extended that deadline until August 31, 2015, pursuant to Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2014)). The Board presently expects that rules will be adopted and filed no later than August 31, 2015.

FEDERAL ACTIONS CONSIDERED IN THIS RULEMAKING

This docket includes federal SDWA amendments that USEPA adopted in the time period of July 1, 2014 through December 31, 2014. USEPA adopted one set of amendments during the period that affected the wastewater pretreatment regulations. The following briefly summarizes the federal action that is considered in this rulemaking:

R15-13: Wastewater Pretreatment Update, USEPA Amendments
July 1, 2014 through December 31, 2014

August 19, 2014 (at 79 Fed. Reg. 49001)

USEPA revised the National Pollutant Discharge Elimination System (NPDES) regulations to require the use of a “sufficiently sensitive” analytical method for completing NPDES permit applications and for analyses of pollutants and pollutant parameters under an NPDES permit. The wastewater pretreatment rules are established to help ensure that NPDES permit holders can comply with their NPDES permits. While the amendments do not directly relate to wastewater pretreatment, the amendments affected a segment of the NPDES requirements for analytical methods that is incorporated by reference in the Illinois wastewater pretreatment requirements.

No Later Wastewater Pretreatment Amendments of Interest

The Board engages in ongoing monitoring of federal actions. When the Board observes an action outside the nominal timeframe of a docket that requires expedited consideration, the Board will expedite consideration of those amendments in the pending docket. Federal actions that could warrant expedited consideration include those that directly affect the amendments involved in this docket, those for which compelling reasons would warrant consideration as soon as possible, and those for which the Board has received a request for expedited consideration.

The Board has identified no USEPA action since December 31, 2014 that further amends the wastewater pretreatment rules in a way that affects the present amendments. There is no need to consider later federal actions.

Other Federal Actions Affecting the
Wastewater Pretreatment Regulations

In addition to the amendments to the federal wastewater pretreatment regulations, amendments to certain other federal regulations occasionally have an effect on the Illinois drinking water rules. Most notably, 35 Ill. Adm. Code 310.107 is the centralized incorporations by reference provision for the purposes of the Illinois wastewater pretreatment regulations. This provision includes incorporations by reference of several USEPA rules. These include the federal CWA analytical methods in 40 C.F.R. 136, which USEPA amended on August 19, 2014.

As a routine matter, the Board is updating the version of the *Code of Federal Regulations* incorporated by reference in 35 Ill. Adm. Code 310.107(b) to the 2014 edition. Aside from the August 19, 2014 amendments to 40 C.F.R. 136, USEPA has amended no other of the federal regulations incorporated by reference in 35 Ill. Adm. Code 310.107(b). The Board is further updating the version of the *United States Code* to the 2013 edition in the incorporations by reference in 35 Ill. Adm. Code 310.107(c).

USEPA has not further amended any of the federal regulations incorporated by reference in 35 Ill. Adm. Code 310.107(b) since December 31, 2014, the ending date of the federal actions involved in this proposal for public comment. No further updates to the incorporations by reference will be necessary based on federal actions during the pendency of this IIS rulemaking.

REASONS FOR DELAY AND EXTENSION OF DEADLINE

Section 7.2 of the Act (415 ILCS 5/7.2(b) (2014)) requires the Board to complete IIS rulemaking within one year of the date of the earliest set of federal amendments considered in this docket. USEPA adopted the earliest federal amendments that required Board attention on August 19, 2014, so that the nominal statutory deadline for Board adoption of these amendments is August 19, 2015.

Board staff erred in the timing of this IIS rulemaking, while working to prepare a very large rulemaking proposal in another IIS rulemaking subject area. The fact that today is one day later than the statutory due date makes it necessary to extend the due date. Filing the present amendments should occur no later than August 24, 2015. To allow a margin of safety in filing the adopted amendments, the Board hereby extends the due date from August 19, 2015 to August 31, 2015.

PUBLIC COMMENTS

The Board adopted a proposal for public comment on April 2, 2015. A Notice of Proposed Amendment appeared in the April 24, 2015 issue of the *Illinois Register*, at 39 Ill. Reg. 5762. The Board received no public comments on the proposal. The Board did receive a document from JCAR called “JCAR’s First Notice Version for use in creating Second Notice Changes. The Board has made two minor corrections in the text in response to that document. The two changes prompted by JCAR are listed in Table 2 below.

DISCUSSION

The following discussion begins with a description of the amendments undertaken in direct response to the federal action involved in this proceeding. The discussion closes with a description of the miscellaneous amendments that are not directly derived from the federal action, but which the Board routinely includes in these update dockets as necessary.

Discussions of the Federal Action

Requirement to Use “Sufficiently Sensitive” Methods--Section 310.107

The USEPA action of August 19, 2014 (79 Fed. Reg. 49001) amended NPDES provisions relating to analyses performed for an NPDES permit application and for establishing NPDES permit limitations to require the use of “sufficiently sensitive” analytical methods for pollutant and pollutant parameters. USEPA further amended the provision that prescribes analytical methods for use in demonstrating compliance under the federal CWA (33 U.S.C. §§ 1251 *et. seq.* (2011)) to require use of “sufficiently sensitive” methods.

The provisions that USEPA amended were 40 C.F.R. 122.21, 122.44, and 136.1. These provisions relate to NPDES permitting. They are irrelevant to federal wastewater pretreatment requirements but for the fact that the federal pretreatment standards, at 40 C.F.R. 403.7(b)(2)(v) and 403.12(b)(5)(v), (g)(5), and (h), require use of the method listed in 40 C.F.R. 136. The incorporations by reference in 40 C.F.R. 310.107(b) include incorporation of 40 C.F.R. 136. Thus, USEPA adding a requirement for use of a “sufficiently sensitive” method requires

updating the incorporation by reference in order for the Illinois wastewater pretreatment rules to remain identical-in-substance to the federal requirements from which they derive.

The amendments to 40 C.F.R. 122.21 and 122.44 each define “sufficiently sensitive.” There are similarities between the two definitions, but the two definitions differ. The definition in 40 C.F.R. 122.21, relating to analyses for permit application, states as follows:

(i) For the purposes of this requirement, a method approved under 40 [C.F.R.] 136 or required under . . . [wastewater discharge or sludge management requirements]¹ is “sufficiently sensitive” when:

(A) The method minimum level (ML) is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter; or

(B) The method ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility’s discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or

(C) The method has the lowest ML of the analytical methods approved under 40 [C.F.R.] 136 or required under . . . [wastewater discharge or sludge management requirements]² for the measured pollutant or pollutant parameter. 40 C.F.R. 122.21(e)(3), as added at 79 Fed. Reg. 49001, 49013 (Aug. 19, 2014).

The definition in 40 C.F.R. 122.44, relating to analyses to determine compliance with permit conditions, states as follows:

(A) For the purposes of this paragraph, a method is “sufficiently sensitive” when:

(1) The method minimum level (ML) is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or

(2) The method has the lowest ML of the analytical methods approved under 40 [C.F.R.] 136 or required under . . . [wastewater discharge or sludge management requirements]³ for the measured pollutant or pollutant parameter. 40 C.F.R. 122.44(i)(1)(iv)(A), as added at 79 Fed. Reg. 49001, 49013 (Aug. 19, 2014).

The third alternative in the definition of “sufficiently sensitive” for the purpose of permit applications is the same as the second alternative in the definition with regard to effluent monitoring. This segment of each definition deems the most sensitive method approved by USEPA as “sufficiently sensitive.”

¹ Actually citing 40 C.F.R. chapter I, subchapters N and O.

² See *supra* note 1.

³ See *supra* note 1.

The first condition in the definition of “sufficiently sensitive” for permit applications deems “sufficiently sensitive” a method that can quantify a pollutant below the stream water quality criterion for that pollutant. The second condition deems “sufficiently sensitive” a method that cannot quantify a pollutant at the level of the water quality criterion, but which can quantify the concentration of the pollutant in the effluent for which an NPDES permit is sought.

In the definition of “sufficiently sensitive” as it relates to analyses for contaminants to demonstrate compliance with permit conditions, the method limit must be below the effluent limitation.

In the context of analyses to measure pollutants in wastewater introduced to the collecting system of a publicly owned treatment works, the provision of 40 C.F.R. 122.44(i)(1)(iv)(A) would seem most germane. A “sufficiently sensitive” method would be either the most sensitive method approved by USEPA or a method that has a method detection limit lower than the limit imposed on the contaminant in the wastewater discharged to the collection system.

The Board updated the incorporation by reference to 40 C.F.R. 136 in 35 Ill. Adm. Code 310.107. This will require the use of analytical methods under the Illinois wastewater pretreatment that would correspond with those required by the August 19, 2014 USEPA methods amendments. Any person interested in the substance of the USEPA actions should review the *Federal Register* notices of August 19, 2014.

As is discussed immediately below, the Board updated incorporations by reference of federal provisions that were not affected in this proceeding. Those incorporations by reference of unaffected federal regulations and statutory provisions appear in 35 Ill. Adm. Code 310.107(b) and (c).⁴ The Board updated all of the incorporations by reference in the opened Illinois rules to the latest edition of the *Code of Federal Regulations* that is available.

Request for Comments. The Board requested public comment on the incorporation of the August 19, 2014 USEPA amendments relating to use of “sufficiently sensitive” methods into the Illinois wastewater pretreatment regulations. The Board received no comments in this regard.

Corrective and Clarifying Revisions and Deviations from the Federal Text

The Board is ever mindful of the limited discretion authorized in the context of an identical-in-substance proceeding. The Board applies the same criteria to additional amendments that are not directly derived from the instant federal amendments as are applied to deviations from the literal text of federal amendments. The Board is limited to (1) “those changes that are necessary for compliance with the Illinois Administrative Code”; (2) “technical changes that in no way change the scope or meaning of any portion of the regulations”; (3) “USEPA rules that are not applicable to persons or facilities in Illinois”; (4) “things which are outside the Board’s normal functions”; and (5) “apparent typographical and grammatical errors.” *See* 415 ILCS

⁴ These are the Illinois provisions opened as a direct result of the August 19, 2014 USEPA amendments.

5/7.2(a), (a)(1), (a)(2), and (a)(7) (2014). Thus, the Board will only make minor, non-substantive deviations from the literal text of federal rules or corrections and clarifications in this context. These deviations from the literal text of federal rules or corrections are non-substantive in effect.

Deviations from the Literal Text of the Federal Rules

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

The Board updates the citations to the Code of Federal Regulations to the most recent version available. As discussed above, the most recent versions of the Code of Federal Regulations available to the Board is the July 1, 2014 edition for USEPA regulations (Title 40). Thus, the Board has updated all citations to Title 40 to the 2014 edition of the Code of Federal Regulations, adding references to later amendments using their appropriate Federal Register citation, where necessary.

The Board substitutes “or” for “/” in most instances where this appeared in the federal base text, using “and” where more appropriate. The Board further uses opportunities to make a number of corrections to punctuation, grammar, spelling, and cross-reference format throughout the opened text when the Board finds the corrections are needed. The Board changes “who” to “that” and “he” or “she” to “it,” where the person to which the regulation referred is not necessarily a natural person, or to “he or she,” where a natural person is evident; changes “which” to “that” for restrictive relative clauses; substitutes “must” for “shall”; capitalizes the section headings and corrects their format where necessary; and corrects punctuation within sentences.

In addition, the Board edits federal rules to establish a uniform usage throughout the Board’s regulations. For example, with respect to “shall,” “will,” and “may,” “must” is used when an action is required by the rule, without regard to whether the action is required of the subject of the sentence or not. The Board no longer uses “shall,” since this word is not used in everyday language. Thus, where a federal rule uses “shall,” the Board substitutes “must.” This is a break from our former practice where the Board used “shall” when the subject of a sentence has a duty to do something. “Will” is used when the Board obliges itself to do something. “May” is used when choice of a provision is optional. “Or” is used rather than “and/or,” and denotes “one or both.” “Either . . . or” denotes “one but not both.” “And” denotes “both.”

The Joint Committee on Administrative Rules has requested that the Board refer to the United States Environmental Protection Agency in the same manner throughout all of our bodies of regulations: air, water, drinking water, RCRA Subtitle D (municipal solid waste landfill), RCRA Subtitle C (hazardous waste), underground injection control (UIC), etc. The Board has decided to refer to the United States Environmental Protection Agency as “USEPA.” The Board has converted existing rules in past rulemakings as sections become open to amendment. The

Board will continue to convert “EPA” used in federal text to “USEPA,” where USEPA is clearly intended.

Amendments Not Directly Derived from the Literal Text of Federal Amendments

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

When a necessary minor correction comes to the attention of the Board, Board staff makes a note of the correction, and set it aside until the next opportunity to make the correction. The next opportunity generally presents itself when the section involved is next opened for amendment as a result of amendments to the corresponding federal text. The Board has cataloged a small number of changes since the last wastewater pretreatment update docket, Wastewater Pretreatment Update, USEPA Regulations (January 1, 2012 though June 30, 2012), R13-7 (Jan. 24, 2013). Discussion of those amendments appears immediately below.

Discussion of a Particular Corrective Amendment

The Board has traditionally used the occasion of these identical-in-substance updates to correct segments of the base text of the Illinois regulations. These corrections are non-substantive in effect. The Board is including a number of non-substantive corrections in this docket. The Board does not ordinarily discuss particular corrective amendments. The corrections are itemized in the Table 1, which appears at the end of the opinion segment of this opinion and order.

On occasion, however, the Board adds discussion of corrective amendments where the Board believes that explanation will aid understanding of the correction made. Only one correction made in this docket warrants specific discussion. That discussion follows.

The Board requests that the Agency, JCAR, and the regulated community review the table and the text of the corrections. The Board requests comment on the corrections. The Board also asks for the assistance of the Agency, JCAR, and the regulated community in the process of spotting and correcting errors or omissions in the rules. The Board requests that interested persons submit suggestions for the correction of any errors of which they become aware. The Board will either include the corrections in this docket or catalog them for future revisions, if the suggestions relate to segments of the text that are not already involved in this proceeding and the Board cannot add them.

Moving an Incorporation by Reference. The board has long practiced placing incorporations by reference in a centralized location. *See, e.g.*, 35 Ill. Adm. Code 310.107 (for wastewater pretreatment), 611.102 (for drinking water), and 720.111 (for hazardous waste). Where federal regulation incorporated by reference does not have a direct substantive counterpart in the Illinois regulations, the centralized location of the incorporation by reference makes it easier to update the incorporations by reference. These federal provision are not

regulations directly within the ambit of the Board's identical-in-substance mandate. *See* 415 ILCS 5/13.3 (2014). The Board does not routinely monitor these federal regulations for USEPA revisions. A USEPA revision of these federal regulations would not necessarily make corresponding amendments to Illinois rules necessary. For this reason, centrally locating the incorporations by reference to these provisions facilitates updating the reference on a routine basis.

For example, the centralized incorporations by reference provision of the wastewater pretreatment regulations includes federal requirements for public access to information,⁵ submission of required reports by digital means,⁶ public participation in proceedings,⁷ required analytical methods,⁸ and sludge use standards.⁹ *See* 35 Ill. Adm. Code 310.107(b). These are all regulations upon which the federal wastewater pretreatment standards rely, and their incorporation by reference is essential to the integrity of the Illinois wastewater pretreatment rules. But they are not directly related to the federal wastewater pretreatment standards.

On the other hand, the Board has incorporated by reference numerous federal categorical wastewater pretreatment standards within the text of the substantive Illinois wastewater pretreatment requirements. There are nearly 900 of such incorporations by reference spread throughout the substantive requirements of 35 Ill. Adm. Code 307. The Board regularly monitors USEPA actions with regard to the categorical pretreatment standards. When USEPA amends a categorical pretreatment standard, the Board opens the corresponding Illinois provisions for amendment. The resulting Board amendments involve both revising the substantive text and updating the incorporations by reference. Spreading incorporations by reference to those federal standards throughout pertinent segments of the body of the substantive Illinois requirements serves two purposes: (1) their location in the body of the rules facilitates updating the regulations as a whole; and (2) a centralized listing these incorporations by reference would unnecessarily increase the volume of text involved in each update.

Based on the foregoing considerations, the Board finds it necessary to move one incorporation by reference from 35 Ill. Adm. Code 307 into the centralized listing in 35 Ill. Adm. Code 310.107(b). The Board has used two federal sources incorporated by reference to define "toxic pollutant" in 35 Ill. Adm. Code 307.1005. The Board has centrally located the incorporation by reference to tables II and III in appendix D to 40 C.F.R. 122 in 35 Ill. Adm. Code 310.107. To date, the incorporation by reference to 40 C.F.R. 401.15 is located in 35 Ill. Adm. Code 307.1005. Moving this latter incorporation by reference from 35 Ill. Adm. Code 307.1005 to the centralized incorporations by reference in 35 Ill. Adm. Code 310.107 will be consistent with the handling of all other incorporations by reference. It will further facilitate updating the incorporation by reference in the future.

⁵ 40 C.F.R. 2.302 (2012).

⁶ 40 C.F.R. 3.2, 3.3, 3.10, and 3.2000 (2012).

⁷ 40 C.F.R. 25 (2012).

⁸ Tables II and III in appendix D to 40 C.F.R. 122 and 40 C.F.R. 136 (2012).

⁹ 40 C.F.R. 503 (2012).

The Board has not removed the parallel incorporation by reference to 40 C.F.R. 401.15 from 35 Ill. Adm. Code 307.1005. The Board will remove that incorporation by reference in a future rulemaking in which Part 307 is open for other amendments.

Request for Comments. The Board requested public comment on movement of the incorporation by reference to 40 C.F.R. 401.15 from 35 Ill. Adm. Code 307.1005 to 35 Ill. Adm. Code 310.107. The Board received no comments in this regard.

Tabulation of Miscellaneous Housekeeping Amendments

The Table 1 below lists the various corrections and amendments that are not based on current federal amendments. The amendments listed are not directly derived from the current federal amendments. Table 2 lists two corrections to the text of the proposed amendments suggested by JCAR.

**Table 1:
Board Housekeeping Amendments**

Section	Source	Revision(s)
310.107(b), 40 C.F.R. 2.302	Board	Updated the <i>Code of Federal Regulations</i> reference to the latest edition available.
310.107(b), 40 C.F.R. 3.2	Board	Updated the <i>Code of Federal Regulations</i> reference to the latest edition available.
310.107(b), 40 C.F.R. 3.3	Board	Updated the <i>Code of Federal Regulations</i> reference to the latest edition available.
310.107(b), 40 C.F.R. 3.10	Board	Updated the <i>Code of Federal Regulations</i> reference to the latest edition available.
310.107(b), 40 C.F.R. 3.2000	Board	Updated the <i>Code of Federal Regulations</i> reference to the latest edition available.
310.107(b), 40 C.F.R. 25	Board	Updated the <i>Code of Federal Regulations</i> reference to the latest edition available.
310.107(b), tables II and III in appendix D to 40 C.F.R. 122	Board	Updated the <i>Code of Federal Regulations</i> reference to the latest edition available.
310.107(b), 40 C.F.R. 122.23(b) and (c)	Board	Updated the <i>Code of Federal Regulations</i> reference to the latest edition available.

310.107(b), 40 C.F.R. 136	Board	Updated the <i>Code of Federal Regulations</i> reference to the latest edition available; added a reference to include the August 19, 2014 USEPA amendments.
310.107(b), 40 C.F.R. 401.15	Board	Added the incorporation by reference moved from 35 Ill. Adm. Code 307.1005.
310.107(b), 40 C.F.R. 403	Board	Updated the <i>Code of Federal Regulations</i> reference to the latest edition available.
310.107(b), 40 C.F.R. 403.12(b)	Board	Updated the <i>Code of Federal Regulations</i> reference to the latest edition available.
310.107(b), 40 C.F.R. 403.15	Board	Updated the <i>Code of Federal Regulations</i> reference to the latest edition available.
310.107(b), Appendix D to 40 C.F.R. 403	Board	Updated the <i>Code of Federal Regulations</i> reference to the latest edition available.
310.107(b), Appendix G to 40 C.F.R. 403	Board	Updated the <i>Code of Federal Regulations</i> reference to the latest edition available.
310.107(b), 40 C.F.R. 503	Board	Updated the <i>Code of Federal Regulations</i> reference to the latest edition available.
310.107(c), “section 1001 of federal Crimes and Criminal Procedure”	Board	Updated the <i>United States Code</i> reference to the latest edition available.
310.107(c), “the federal Clean Water Act”	Board	Updated the <i>United States Code</i> reference to the latest edition available.
310.107(c), “section 204(b) of the federal Clean Water Act”	Board	Updated the <i>United States Code</i> reference to the latest edition available.
310.107(c), “section 212(2) of the federal Clean Water Act”	Board, JCAR	Updated the <i>United States Code</i> reference to the latest edition available; removed the extra closing parenthesis mark after “(33 USC 1292(2).”
310.107(c), “section 307(b), (c), and (d) of the federal Clean Water Act”	Board	Updated the <i>United States Code</i> reference to the latest edition available.

310.107(c), “section 308 of the federal Clean Water Act”	Board	Updated the <i>United States Code</i> reference to the latest edition available.
310.107(c), “section 309(c)(4) of the federal Clean Water Act”	Board	Updated the <i>United States Code</i> reference to the latest edition available.
310.107(c), “section 309(c)(6) of the federal Clean Water Act”	Board, JCAR	Updated the <i>United States Code</i> reference to the latest edition available; removed the extra closing parenthesis mark after “(2013).”
310.107(c), “section 405 of the federal Clean Water Act”	Board	Updated the <i>United States Code</i> reference to the latest edition available.
310.107(c), “Subtitles C and D of the federal Resource Conservation and Recovery Act”	Board	Updated the <i>United States Code</i> reference to the latest edition available.

**Table 2:
Revisions to the Text of the Proposed Amendments
Made in Final Adoption**

Section	Source	Revision(s)
310.107(c), section 212(2) of the federal Clean Water Act	JCAR	Removed the extra closing parenthesis mark after “(33 USC 1292(2).”
310.107(c), section 309(c)(6) of the federal Clean Water Act	JCAR	Removed the extra closing parenthesis mark after “(2013).”

ORDER

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

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
310.106	Electronic Reporting
310.107	Incorporations by Reference
310.110	Definitions
310.111	New Source
310.112	Significant Industrial User

SUBPART B: PRETREATMENT STANDARDS

Section	
310.201	General Prohibitions
310.202	Specific Prohibitions
310.210	Local Limits Developed by POTW
310.211	Status of Local Limits
310.220	Categorical Standards
310.221	Source Category Determination Request
310.222	Deadline for Compliance with Categorical Standards
310.230	Concentration and Mass Limits
310.232	Dilution Prohibited as a Substitute for Treatment
310.233	Combined Waste Stream 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
310.511	Receiving Electronic Documents
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 (Repealed)
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 POTWs
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
310.636	Annual Certification by Non-Significant Categorical Users
310.637	Receiving Electronic Documents

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 that 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

SUBPART I: UPSETS

Section	
310.901	Definition
310.902	Effect of an Upset
310.903	Conditions Necessary for an Upset
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310.905	Reviewability of Claims of Upset
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SUBPART J: BYPASS

Section	
310.910	Definitions
310.911	Bypass Not Violating Applicable Pretreatment Standards or Requirements
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SUBPART K: MODIFICATION OF POTW PRETREATMENT PROGRAMS

Section	
310.920	General
310.921	Substantial Modifications Defined
310.922	Approval Procedures for Substantial Modifications
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SUBPART L: FEDERAL PROJECT XL AGREEMENTS

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

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

SOURCE: Adopted in R86-44 at 12 Ill. Reg. 2502, effective January 13, 1988; amended in R88-18 at 13 Ill. Reg. 2463, effective January 31, 1989; amended in R89-3 at 13 Ill. Reg. 19243, effective November 27, 1989; amended in R89-12 at 14 Ill. Reg. 7608, effective May 8, 1990; amended in R91-5 at 16 Ill. Reg. 7346, effective April 27, 1992; amended in R95-22 at 20 Ill. Reg. 5533, effective April 1, 1996; amended in R96-12 at 20 Ill. Reg. 10671, effective July 24, 1996; amended in R97-7 at 21 Ill. Reg. 5163, effective April 10, 1997; amended in R98-23 at 22 Ill. Reg. 11465, effective June 22, 1998; amended in R99-17 at 23 Ill. Reg. 8412, effective July 12, 1999; amended in R00-7 at 24 Ill. Reg. 2372, effective January 26, 2000; amended in R00-15 at 24 Ill. Reg. 11633, effective July 24, 2000; amended in R01-5 at 25 Ill. Reg. 1322, effective January 11, 2001; amended in R01-25 at 25 Ill. Reg. 10860, effective August 14, 2001; amended in R02-3 at 26 Ill. Reg. 4008, effective February 28, 2002; amended in R02-9 at 26 Ill. Reg. 4653, effective March 18, 2002; amended in R03-13 at 27 Ill. Reg. 15137, effective September 10, 2003; amended in R04-1 at 28 Ill. Reg. 3390, effective February 6, 2004; amended in R04-18 at 28 Ill. Reg. 10684, effective July 13, 2004; amended in R06-13 at 30 Ill. Reg. 17847, effective October 26, 2006; amended in R08-5/R08-7/R08-13 at 32 Ill. Reg. 19008, effective November

26, 2008; amended in R13-7 at 37 Ill. Reg. 1962, effective February 4, 2013; amended in R15-13 at 39 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 310.107 Incorporations by Reference

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

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

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

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

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

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

40 CFR 2.302 ~~(2012)~~-(2014) (Special Rules Governing Certain Information Obtained Under the Clean Water Act), referenced in Section 310.105.

40 CFR 3.2 ~~(2012)~~-(2014) (How Does This Part Provide for Electronic Reporting?), referenced in Section 310.106.

40 CFR 3.3 ~~(2012)~~(2014) (What Definitions Are Applicable to This Part?), referenced in Section 310.106.

40 CFR 3.10 ~~(2012)~~(2014) (What Are the Requirements for Electronic Reporting to EPA?), referenced in Section 310.106.

40 CFR 3.2000 ~~(2012)~~(2014) (What Are the Requirements Authorized State, Tribe, and Local Programs' Reporting Systems Must Meet?), referenced in Section 310.106.

40 CFR 25 ~~(2012)~~(2014) (Public Participation in Programs Under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act), referenced in Section 310.510.

Tables II (Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GS/MS)) and III (Other Toxic Pollutants (Metals and Cyanide) and Total Phenols) in appendix D to 40 CFR 122 ~~(2012)~~(2014) (NPDES Permit Application Testing Requirements), referenced in 35 Ill. Adm. Code 307.1005.

40 CFR 122.23(b) and (c) ~~(2012)~~(2014) (Concentrated Animal Feeding Operations), referenced in 35 Ill. Adm. Code 307.2201.

40 CFR 136 ~~(2012)~~(2014), as amended at 79 Fed. Reg. 49001 (Aug. 19, 2014) (Guidelines Establishing Test Procedures for the Analysis of Pollutants), referenced in 35 Ill. Adm. Code 307.1003 and 307.6500 and Sections 310.605, 310.610, and 310.611.

40 CFR 401.15 (2014) (Toxic Pollutants), referenced in 35 Ill. Adm. Code 307.1005.

40 CFR 403 ~~(2012)~~(2014) (General Pretreatment Regulations for Existing and New Sources of Pollution), referenced in Section 310.432.

40 CFR 403.12(b) ~~(2012)~~(2014) (Reporting Requirements for POTWs and Industrial Users), referenced in Section 310.602.

40 CFR 403.15 ~~(2012)~~(2014) (Net/Gross Calculation), referenced in Section 310.801.

Appendix D to 40 CFR 403 ~~(2012)~~(2014) (Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Wastestream Formula), referenced in Section 310.233.

Appendix G to 40 CFR 403 ~~(2012)~~(2014) (Pollutants Eligible for a Removal Credit), referenced in Section 310.303.

40 CFR 503 ~~(2012)~~(2014) (Standards for the Use or Disposal of Sewage Sludge), referenced in Section 310.303.

c) The following federal statutes are incorporated by reference:

Section 1001 of federal Crimes and Criminal Procedure (18 USC 1001 ~~(2010)~~ (2013)), referenced in Section 310.633.

The federal Clean Water Act (CWA) (33 USC 1251 et seq. ~~(2010)~~ (2013)), referenced in Section 310.110.

Section 204(b) of the federal Clean Water Act (33 USC 1284(b) ~~(2010)~~ (2013)), referenced in Section 310.510.

Section 212(2) of the federal Clean Water Act (33 USC 1292(2) ~~(2010)~~ (2013)), referenced in Section 310.110.

Section 307(b), (c), and (d) of the federal Clean Water Act (33 USC 1317(b), (c), and (d) ~~(2010)~~ (2013)), referenced in Section 310.110.

Section 308 of the federal Clean Water Act (33 USC 1318 ~~(2010)~~ (2013)), referenced in Section 310.510.

Section 309(c)(4) of the federal Clean Water Act (33 USC 1319(c)(4) ~~(2010)~~ (2013)), referenced in Section 310.633.

Section 309(c)(6) of the federal Clean Water Act (33 USC 1319(c)(6) ~~(2010)~~ (2013)), referenced in Section 310.633.

Section 405 of the federal Clean Water Act (33 USC 1345 ~~(2010)~~ (2013)), referenced in Section 310.510.

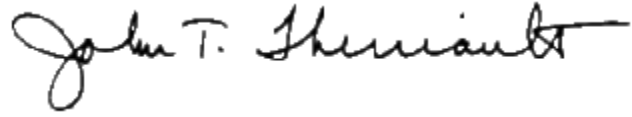
Subtitles C and D of the federal Resource Conservation and Recovery Act (42 USC 6921-6939e and 6941-6949a) ~~(2010)~~ (2013)), referenced in Section 310.510.

d) This Part incorporates no future editions or amendments.

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

(Source: Amended at 39 Ill. Reg. _____, effective _____)

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 20, 2015, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Clerk
Illinois Pollution Control Board