

ILLINOIS POLLUTION CONTROL BOARD

February 17, 2022

IN THE MATTER OF: )  
WASTEWATER PRETREATMENT ) R22-7  
UPDATE, USEPA AMENDMENTS (January ) (Identical-in-Substance  
1, 2021 through June 30, 2021) ) Rulemaking - Water)

Proposed Rule. Proposal for Public Comment.

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

The Board today proposes amendments to Illinois regulations that are “identical in substance” (IIS) to wastewater pretreatment regulations adopted by the United States Environmental Protection Agency (USEPA) during the first half of 2021.

Sections 7.2 and 13.3 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/7.2 and 13.3 (2020)) provide for quick adoption by the Board of regulations that are “identical in substance” to regulations that USEPA adopts to implement sections 307(b), (c), and (d) and 402(b)(8) and (b)(9) of the federal Clean Water Act (CWA) (33 U.S.C. §§ 1317(b), (c), and (d) and 1412(b)(8) and (b)(9) (2019)). Section 13.3 of the Act also provides that Title VII of the Act and Section 5 of the Illinois Administrative Procedure Act (5 ILCS 100/5-35 and 5-40 (2020)) do not apply to the Board’s adoption of identical-in-substance regulations.

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

USEPA took one action affecting the wastewater pretreatment rules during the first half of 2021 that requires Board attention. The USEPA action requires the Board to update one incorporation by reference in 35 Ill. Adm. Code 310.107.

The Board would normally propose updating *Code of Federal Regulations* citations incorporated by reference to the latest version available. The July 1, 2021 version would normally be available from the Government Printing Office (GPO). Likely because of the CoViD-19 pandemic, it is not as of today. If the GPO makes the 2021 version available before final adoption, the Board will update the incorporations by reference.

The Board will publish the proposed amendments in the *Illinois Register* and will receive public comments for at least 45 days after publication. The Board expects to adopt final rules long before the statutory due date of May 19, 2022.

This opinion has four segments. First, the Board identifies USEPA’s actions that resulted in this rulemaking and discusses the proposed amendments. Second, the Board addresses corrections and other amendments. Third, the Board invites public comment on the proposed amendments, which are found in the order following this opinion. Finally, the Board provides its timetable for completing this rulemaking.

## **FEDERAL ACTION IMPLEMENTED**

The USEPA actions that require an amendment to the Illinois regulations is summarized below.

**May 19, 2021 (86 Fed. Reg. 27226)**: USEPA updated the analytical methods in 40 C.F.R. 136 used for effluent analyses under the Clean Water Act. The Illinois wastewater pretreatment rules incorporate those methods by reference. The Board must update that incorporation by reference to include this update.

The Board proposes updating the incorporation by reference in the Illinois wastewater pretreatment standards.

## **AMENDMENTS AND CORRECTIONS TO BACKGROUND TEXT**

The Board often finds that a limited number of amendments not derived from USEPA actions are needed. These are non-substantive amendments—usually of a stylistic and corrective nature. The Board ordinarily lists those corrections in the Identical-in-Substance Rulemaking Addendum for Proposed Rulemaking (IIS-RA(P)) for the proceeding.

The Board proposes no stylistic and corrective amendments. The Board may, however, include changes not based on USEPA actions in the adopted amendments.

Ordinarily, updated *Code of Federal Regulations* citations are available before the date the Board proposes the present amendments. Possibly due to the Coronavirus-19 pandemic, the Government Printing Office has not yet made available the 2021 version of Title 40. The 2020 version remains the latest available. The Board will update the references at adoption if the 2021 version becomes available.

## **IIS Rulemaking Addendum**

The IIS-RA(P) fully lists the differences between the text of the USEPA amendments and the Board's language in this rulemaking. Table 1 lists USEPA amendments that the Board did not include in the proposal.

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

## **PUBLIC COMMENTS**

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

**TIMETABLE TO COMPLETE RULEMAKING**

Under Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2020)), the Board must complete this rulemaking within one year after the corresponding federal action before May 19, 2022.

Adopting this proposal for public comment today will allow the Board to timely complete rulemaking action before May 16, 2022.

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

<b>Board order proposing amendments:</b>	<b>February 17, 2022</b>
Submission for <i>Illinois Register</i> publication:	February 28, 2022
Estimated <i>Illinois Register</i> publication:	March 11, 2022
Estimated end of 45-day public comment period:	April 25, 2022
<b>Board order adopting amendments:</b>	<b>May 4, 2022</b>
<b>Estimate of when the rules take effect:</b>	<b>May 16, 2022</b>
Estimated <i>Illinois Register</i> publication:	May 27, 2022

**ORDER**

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

I, Don A Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 17, 2022, by a vote of 5-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board

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
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 Definitions  
 310.911 Bypass Not Violating Applicable Pretreatment Standards or Requirements  
 310.912 Notice  
 310.913 Prohibition of Bypass

SUBPART K: MODIFICATION OF POTW PRETREATMENT PROGRAMS

Section

310.920 General  
 310.921 Substantial Modifications Defined  
 310.922 Approval Procedures for Substantial Modifications  
 310.923 Approval Procedures for Non-Substantial Modifications  
 310.924 Incorporation of Modifications into the Permit

SUBPART L: FEDERAL PROJECT XL AGREEMENTS

Section

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

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

SOURCE: Adopted in R86-44 at 12 Ill. Reg. 2502, effective January 13, 1988; amended in R88-18 at 13 Ill. Reg. 2463, effective January 31, 1989; amended in R89-3 at 13 Ill. Reg. 19243, effective November 27, 1989; amended in R89-12 at 14 Ill. Reg. 7608, effective May 8, 1990; amended in R91-5 at 16 Ill. Reg. 7346, effective April 27, 1992; amended in R95-22 at 20 Ill. Reg. 5533, effective April 1, 1996; amended in R96-12 at 20 Ill. Reg. 10671, effective July 24, 1996; amended in R97-7 at 21 Ill. Reg. 5163, effective April 10, 1997; amended in R98-23 at 22 Ill. Reg. 11465, effective June 22, 1998; amended in R99-17 at 23 Ill. Reg. 8412, effective July 12, 1999; amended in R00-7 at 24 Ill. Reg. 2372, effective January 26, 2000; amended in R00-15 at 24 Ill. Reg. 11633, effective July 24, 2000; amended in R01-5 at 25 Ill. Reg. 1322, effective January 11, 2001; amended in R01-25 at 25 Ill. Reg. 10860, effective August 14, 2001; amended in R02-3 at 26 Ill. Reg. 4008, effective February 28, 2002; amended in R02-9 at 26 Ill. Reg. 4653, effective March 18, 2002; amended in R03-13 at 27 Ill. Reg. 15137, effective September 10, 2003; amended in R04-1 at 28 Ill. Reg. 3390, effective February 6, 2004; amended in R04-18 at 28 Ill. Reg. 10684, effective July 13, 2004; amended in R06-13 at 30 Ill. Reg. 17847, effective October 26, 2006; amended in R08-5/R08-7/R08-13 at 32 Ill. Reg. 19008, effective November 26, 2008; amended in R13-7 at 37 Ill. Reg. 1962, effective February 4, 2013; amended in R15-13 at 39 Ill. Reg. 12357, effective August 24, 2015; amended in R16-9 at 41 Ill. Reg. 1155, effective January 23, 2017; amended in R21-8 at 44 Ill. Reg. 19486, effective December 3, 2020; amended in R21-15 at 45 Ill. Reg. 8061, effective June 21, 2021; amended in R22-7 at 46 Ill. Reg. \_\_\_\_\_, effective

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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](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 (2020) (Special Rules Governing Certain Information Obtained Under the Clean Water Act), referenced in Section 310.105.

40 CFR 3.2 (2020) (How Does This Part Provide for Electronic Reporting?), referenced in Section 310.106.

40 CFR 3.3 (2020) (What Definitions Are Applicable to This Part?), referenced in Section 310.106.

40 CFR 3.10 (2020) (What Are the Requirements for Electronic Reporting to EPA?), referenced in Section 310.106.

40 CFR 3.2000 (2020) (What Are the Requirements Authorized State, Tribe, and Local Programs' Reporting Systems Must Meet?), referenced in Section 310.106.

40 CFR 25 (2020) (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 (2020) (NPDES Permit Application Testing Requirements), referenced in 35 Ill. Adm. Code 307.1005.

40 CFR 122.23(b) and (c) (2020) (Concentrated Animal Feeding Operations), referenced in 35 Ill. Adm. Code 307.2201.

Appendix A to 40 CFR 127 (2020), as amended at 85 Fed. Reg. 69189 (Nov. 2, 2020) (Minimum Set of NPDES Data), referenced in Sections 310.106 and 310.612.

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

40 CFR 136 (2020) (Guidelines Establishing Test Procedures for the Analysis of Pollutants), as amended at 86 Fed. Reg. 27226 (May 19, 2021), referenced in 35 Ill. Adm. Code 307.1003 and 307.6500 and Sections 310.605, 310.610, and 310.611.

40 CFR 401.15 (2020) (Toxic Pollutants), referenced in 35 Ill. Adm. Code 307.1005.

40 CFR 403 (2020) (General Pretreatment Regulations for Existing and New Sources of Pollution), referenced in Section 310.432.

40 CFR 403.12(b) (2020) (Reporting Requirements for POTWs

and Industrial Users), referenced in Section 310.602.

40 CFR 403.15 (2020) (Net/Gross Calculation), referenced in Section 310.801.

Appendix D to 40 CFR 403 (2020) (Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Wastestream Formula), referenced in Section 310.233.

Appendix G to 40 CFR 403 (2020) (Pollutants Eligible for a Removal Credit), referenced in Section 310.303.

40 CFR 503 (2020) (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 (2019)), referenced in Section 310.633.

The federal Clean Water Act (CWA) (33 USC 1251 et seq. (2019)), referenced in Sections 310.110 and 310.705.

Section 204(b) of the federal Clean Water Act (33 USC 1284(b) (2019)), referenced in Section 310.510.

Section 212(2) of the federal Clean Water Act (33 USC 1292(2) (2019)), referenced in Section 310.110.

Section 307(b), (c), and (d) of the federal Clean Water Act (33 USC 1317(b), (c), and (d) (2019)), referenced in Section 310.110.

Section 308 of the federal Clean Water Act (33 USC 1318 (2019)), referenced in Section 310.510.

Section 309(c)(4) of the federal Clean Water Act (33 USC 1319(c)(4) (2019)), referenced in Section 310.633.

Section 309(c)(6) of the federal Clean Water Act (33 USC 1319(c)(6) (2019)), referenced in Section 310.633.

Section 405 of the federal Clean Water Act (33 USC 1345 (2019)), referenced in Section 310.510.

Subtitles C and D of the federal Resource Conservation and Recovery Act (42 USC 6921-6939g and 6941-6949a) (2019)), referenced in Section 310.510.

d) This Part incorporates no future editions or amendments.

BOARD NOTE: The Board has located 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 46 Ill. Reg. \_\_\_\_\_, effective  
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