

ILLINOIS POLLUTION CONTROL BOARD

January 10, 2002

IN THE MATTER OF:)
)
WASTEWATER PRETREATMENT) R02-3
UPDATE, USEPA AMENDMENTS) (Identical-in-Substance
(January 1, 2001 through June 30, 2001)) Rulemaking - Public Water Supply)

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

Under Sections 7.2 and 13.3 of the Environmental Protection Act (Act) (415 ILCS 5/7.2 and 13.3 (2000)), the Board today adopts amendments to the Illinois regulations that are “identical in substance” to wastewater pretreatment regulations that the United States Environmental Protection Agency (USEPA) adopted to 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) (1994)). The nominal timeframe of this docket includes federal wastewater pretreatment amendments that USEPA adopted in the period January 1, 2001 through June 30, 2001.

Sections 7.2 and 13.3 provide for quick adoption of regulations that are identical in substance to federal wastewater pretreatment regulations that USEPA adopts to implement Sections 307(b), (c), and (d) and 402(b)(8) and (b)(9) of the FWPCA. 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 (2000)) do not apply to the Board’s adoption of identical-in-substance regulations. The federal wastewater pretreatment regulations are found at 40 C.F.R. 400 through 499.

This opinion supports an order that the Board also adopts today. The Board will promptly file these adopted amendments with the Office of the Secretary of State and will cause the adopted amendments to be published in the *Illinois Register*.

FEDERAL ACTIONS CONSIDERED IN THIS RULEMAKING

The following briefly summarizes the federal actions considered in this rulemaking.

Docket R02-3: January 1, 2001 through June 30, 2001 Wastewater Pretreatment Amendments

USEPA amended the federal wastewater pretreatment regulations on six occasions during the period January 1, 2001 through June 30, 2001. This is summarized below:

66 Fed. Reg. 3466 (January 16, 2001)

By a direct final rule, USEPA approved the use of updated test procedures for

determination of various contaminants in water and wastewater. USEPA amended 40 C.F.R. 136, but later withdrew the amendments on May 15, 2001.

66 Fed. Reg. 3770 (January 22, 2001)

USEPA adopted effluent limitations and new source performance standards applicable to the offshore and coastal subcategories of the oil and gas extraction point source category. The amendments pertained only to direct discharges, and did not pertain to any pretreatment standards.

66 Fed. Reg. 26795 (May 15, 2001)

USEPA withdrew its January 16, 2001 (66 Fed. Reg. 3466) direct final rule that approved the use of updated test procedures for determination of various contaminants in water and wastewater.

66 Fed. Reg. 30807 (June 8, 2001)

USEPA corrected its January 22, 2001 (66 Fed. Reg. 3770) effluent limitations and new source performance standards for the oil and gas extraction point source category.

66 Fed. Reg. 32774 (June 18, 2001)

USEPA adopted technical corrections to the test procedures for determination of mercury in water and wastewater. USEPA amended 40 C.F.R. 136, which is incorporated by reference in 35 Ill. Adm. Code 310.107.

66 Fed. Reg. 33134 (June 20, 2001)

USEPA adopted a correction to its January 22, 2001 (66 Fed. Reg. 6850) effluent limitations and new source performance standards applicable to the offshore and coastal subcategories of the oil and gas extraction point source category.

No Board Action on Certain Federal Actions

Some of the federal actions that occurred during the period of January 1, 2001 through June 30, 2001 required no action on the part of the Board to amend the Illinois drinking water regulations. The Board summarizes those federal actions here:

1. No action was necessary on the federal January 22, 2001 (66 Fed. Reg. 3770) effluent limitations and new source performance standards applicable to sources in the offshore and coastal subcategories of the oil and gas extraction point source category. The same was true of the June 8, 2001 (66 Fed. Reg. 30807) and June 20, 2001 (66 Fed. Reg. 33134) corrections to the January 22, 2001 amendments. There are two reasons why no Board action was necessary on these three actions. First, there are no sources in the offshore and coastal subcategory in Illinois. Section 7.2(a)(1) of the Act (415 ILCS 5/7.2(a)(1) (2000)) prohibits the Board from adopting regulations that do not apply to facilities in this State. Second, all of the amendments relate to direct discharges to the waters of the United States, not to indirect discharges to the collection system of a publicly owned treatment works (POTW) that would be subject to wastewater pretreatment standards.

2. On May 15, 2001 (66 Fed. Reg. 26795), USEPA withdrew its direct final rule of January 16, 2001 (66 Fed. Reg. 3466) in which it approved updated test procedures for water contaminants. This withdrawal obviated Board action on the January 16, 2001 amendments.

No Later Wastewater Pretreatment Amendments Requiring Action Here

The Board engages in ongoing monitoring of federal actions. As of the date of this opinion and accompanying order, we have identified one USEPA action since June 30, 2001 that further amends the wastewater pretreatment rules. But no action is being taken on these amendments in this docket, for the reasons discussed below.

On October 3, 2001 (at 66 Fed. Reg. 32774), USEPA added a provision to the federal wastewater pretreatment regulations that allows the states to modify local pretreatment programs to implement federal Project XL agreements. On October 31, 2001, the Board received from the Illinois Environmental Protection Agency and the Metropolitan Water Reclamation District of Greater Chicago a request for expedited consideration of the October 3, 2001 action in this docket. On November 15, 2001, the Board declined to introduce the October 3, 2001 amendments into this docket, but instead granted expedited consideration of the amendments in a new wastewater pretreatment docket, Wastewater Pretreatment Update, USEPA Amendments (Oct. 3, 2001), R02-9 (Nov. 15, 2001), specifically for the later federal amendments.

Summary Tabulation of the Federal Action Included in This Docket

June 18, 2001 (66 Fed. Reg. 32774)	Technical corrections to the test procedures for determination of mercury in water and wastewater in 40 C.F.R. 136.
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PUBLIC COMMENTS

The Board adopted a proposal for public comment involving the present amendments on October 4, 2001. A Notice of Proposed Amendments appeared in the October 26, 2001 issue of the *Illinois Register*, at 26 Ill. Reg. 13373, which started the public comment period. The Board held the public comment period on the proposal open for 45 days following its publication, until December 10, 2001. We received no comments on the proposal.

DISCUSSION

The following discussion begins with a description of the types of deviations the Board makes from the literal text of federal regulations in adopting identical-in-substance rules. It is followed by a discussion of the amendments and actions undertaken in direct response to the federal actions involved in this proceeding. This first series of discussions is organized by federal subject matter, generally appearing in chronological order of the relevant *Federal Register* notices involved. Finally, this discussion closes with a description of the amendments and actions that are not directly derived from the federal actions.

General Revisions and Deviations from the Federal Text

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 that we see in the text as we engage in these routine update rulemakings.

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.

The Board updates the citations to the *Code of Federal Regulations* to the most recent version available. As of the date of this opinion, the most recent version of the *Code of Federal Regulations* available to the Board is the July 1, 2000 version. Thus, we have updated all citations to the 2000 version, adding references to later amendments using their appropriate *Federal Register* citation, where necessary.

The Board has further updated the citations to the *United States Code* to the latest official edition available, which is the 1994 edition (updated through the supplement 5, January 23, 2000). We have further changed the former “as of July 1, 1988” with “as amended through . . .,” setting forth the date of the latest amendments to the individual statute. The date of the latest amendments was January 6, 1999 for Section 1001 of the Criminal Code (18 U.S.C. 1001 (1994) (relating to false statements), October 31, 1994 for the Clean Water Act (33 U.S.C. 1251 *et seq.* (1994)), and March 26, 1996 for the Resource Conservation and Recover Act of 1976 (42 U.S.C. 6901 *et seq.* (1994)).

The Board has assembled a table to aid in the location of these alterations and to briefly outline their intended purpose. The table sets forth the miscellaneous corrections to the pre-amended base text of the rules in detail. The table is set forth and explained beginning on the next page of this opinion and order. There is no further discussion of most of the deviations and revisions elsewhere in this opinion.

Discussion of the Federal Action

Technical Correction to the Methods for Measurement of Mercury in Water—Section 310.107

On June 18, 2001 (66 Fed. Reg. 32774), USEPA adopted technical corrections to its “Guidelines Establishing Test Procedures for the Analysis of Pollutants.” The corrections clarified the use of field blanks for mercury testing under the Clean Water Act. The corrections rectified an omission in the version of “Method 1631: Mercury in Water by Oxidation, Purge

and Trap and Cold Vapor Atomic Fluorescence Spectrometry.” USEPA originally adopted Method 1631 on May 26, 1998 (63 Fed. Reg. 28867). On June 8, 1999 (64 Fed. Reg. 30417), USEPA adopted Revision B to this method. As a result of litigation involving this method, in Alliance of Automobile Manufacturers v. EPA, No. 99-1420 (D.C. Cir.), USEPA agreed to revise the method relating to the use of field blanks. To effect the corrections, USEPA added a reference to Revision C to Method 1631 at 40 C.F.R. 136.3(b)(41). Incorporating the technical corrections, USEPA stated that it would follow through with more substantive amendments to Method 1631 in the future.

The Board incorporated the federal technical corrections into the Illinois wastewater pretreatment regulations without deviation. 40 C.F.R. 136 is incorporated by reference at 35 Ill. Adm. Code 310.107(b). To incorporate the federal amendments into the Illinois wastewater pretreatment regulations, the Board updates the reference to 40 C.F.R. 136 to include the June 18, 2001 amendments. Persons interested in the substance of the underlying federal action should refer to the notice that appeared in the January 16, 2001 issue of the *Federal Register*.

The Board received no public comment on our incorporation of the June 18, 2001 federal technical corrections to Method 1631 for determining mercury in water into the Illinois wastewater pretreatment regulations.

Discussion of Miscellaneous Housekeeping Amendments

The tables below list numerous corrections and amendments that are not based on current federal amendments. Table 1 (beginning immediately below) includes corrections and clarifications that the Board made in the base text involved in this rulemaking. Table 2 (beginning immediately after Table 1) is a listing of revisions made to the text of the amendments from that proposed and set forth in the Board’s opinion and order of October 4, 2001. Table 2 indicates the changes made, as well as the source that suggested each of the changes. Some of the entries in this table are discussed further in the general discussion on the previous page of this opinion.

Table 1:
Board Housekeeping Amendments

Section	Source	Revision(s)
310.107(a)(1)	Board	Added the parallel Westlaw citation for the court order
310.107(b) “40 CFR 2.302”	Board	Updated the <i>Code or Federal Regulations</i> citation to the latest edition available
310.107(b) “40 CFR 25”	Board	Updated the <i>Code or Federal Regulations</i> citation to the latest edition available
310.107(b) “40 CFR 122”	Board	Updated the <i>Code or Federal Regulations</i> citation to the latest edition available
310.107(b) “40 CFR 403”	Board	Updated the <i>Code or Federal Regulations</i> citation to the latest edition available

310.107(b) "40 CFR 403, Appendix D"	Board	Updated the <i>Code or Federal Regulations</i> citation to the latest edition available
310.107(c)(1)	Board	Changed "the Criminal Code" to "Crimes and Criminal Procedure"; added the date of the latest edition of the <i>United States Code</i>
310.107(c)(2)	Board	Added the date of the latest edition of the <i>United States Code</i> ; changed "as of July 1, 1988" to "amended through October 31, 1994"
310.107(c)(3)	Board	Added the date of the latest edition of the <i>United States Code</i> ; changed "as of July 1, 1988" to "amended through March 26, 1996"

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

Section Revised	Source(s) of Revision(s)	Revision(s)
310.107(c)(1)	JCAR, Board	Changed "the Criminal Code" to "Crimes and Criminal Procedure"; updated the version to the 2000 edition, deleting the "as of . . ."

ORDER

The complete text of the proposed amendments follows:

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	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

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 _____ Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 310.107 Incorporations by Reference

- a) The following publications are incorporated by reference:
- 1) The consent decree in NRDC v. Costle, 1978 WL 23471, 12 Environment Reporter Cases 1833 (D.C. Cir. August 16, 1978).
 - 2) Standard Industrial Classification Manual (1972), and 1977 Supplement, republished in 1983, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20401.
- b) The following provisions of the Code of Federal Regulations are incorporated by reference:
- ~~40 CFR 2.302-(1999)~~ (2000)
- ~~40 CFR 25-(1999)~~ (2000)
- ~~40 CFR 122, Appendix D, Tables II and III-(1999)~~ (2000)
- 40 CFR 128.140(b) (1977)
- ~~40 CFR 136-(1999)~~ (2000), as amended at ~~64 Fed. Reg. 42552, August 4, 1999, 64 Fed. Reg. 73414, December 30, 1999, 65 Fed. Reg. 3008, January 19, 2000, and 65 Fed. Reg. 81242, December 22, 2000 and 66 Fed. Reg. 32774 (June 18, 2001)~~
- ~~40 CFR 403-(1999)~~ (2000)
- ~~40 CFR 403, Appendix D-(1999)~~ (2000)

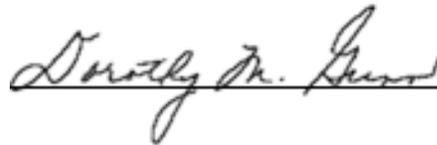
c) The following federal statutes are incorporated by reference:

- 1) Section 1001 of ~~the Criminal Code~~ Crimes and Criminal Procedure (18 USC 1001 ~~(1994)~~ (2000)) ~~as of July 1, 1988~~
- 2) Clean Water Act (33 USC 1251 et seq. (1994)) ~~as of July 1, 1988~~ amended through October 31, 1994
- 3) Subtitles C and D of the Resource Conservation and Recovery Act (42 USC 6901 et seq. (1994)) ~~as of July 1, 1988~~ amended through March 26, 1996

d) This Part incorporates no future editions or amendments.

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

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do certify that the Board adopted the above opinion and order on January 10, 2002, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board