

ILLINOIS POLLUTION CONTROL BOARD
January 23, 1992

IN THE MATTER OF:)
)
PRETREATMENT UPDATE) R91-5
(6/29/90 - 12/31/90)) (Identical in Substance Rules)
)

ADOPTED RULE. FINAL ORDER.

OPINION OF THE BOARD (by J.G. Anderson):

The Board is amending the pretreatment regulations pursuant to Section 13.3 of the Environmental Protection Act (Act). The text is contained in a separate Final Order of this same day.

Section 13.3 of the Act requires the Board to adopt regulations which are "identical in substance" with federal regulations promulgated by the United States Environmental Protection Agency (USEPA) to implement the pretreatment requirements of Sections 307 and 402 of the Clean Water Act, previously known as the Federal Water Pollution Control Act. Section 13.3 provides that Title VII of the Act and Sections 5 and 6.02 of the Administrative Procedure Act (APA) shall not apply to identical in substance regulations adopted to establish the pretreatment program. However, Section 13.3 of the Act does require the Board to provide for notice and public comment before rules are filed with the Secretary of State.

S.B. 1834 (P.A. 85-1048) includes a definition of "identical in substance" in new Section 7.2 of the Act. This legislation codifies the Board's past interpretations of its mandate under Section 13.3 of the Act.

This rulemaking updates the pretreatment rules to cover USEPA rules adopted from June 29 through December 31, 1990. The following Federal Registers are included:

55 Fed. Reg. 26691	June 29, 1990
55 Fed. Reg. 30082	July 24, 1990
55 Fed. Reg. 31692	August 3, 1990
55 Fed. Reg. 36932	September 7, 1990

The pretreatment rules govern discharges by industrial users to publicly owned treatment works (POTWs). The rules are intended to prevent industrial discharges from passing through POTWs without adequate treatment to waters of the State, and to prevent industrial discharges from interfering with the operation of the treatment plant. Effluent discharges are regulated pursuant to 35 Ill. Adm. Code 304 and 309.

The Illinois pretreatment rules are contained in 35 Ill. Adm. Code 307 and 310, and more recently, as part of this rulemaking, Part 309. Part 307 includes the categorical

pretreatment standards, which are incorporated by reference from the USEPA rules. Part 310 specifies how a POTW sets up a pretreatment program, and how industrial users get pretreatment permits or authorizations to discharge. Part 309 sets forth the NPDES permit requirements. Although Part 309 does not pertain directly to sewer users and industrial wastewater pretreatment, it includes requirements at Section 309.103 that pertain to NPDES permittees required to have an approved pretreatment program.

PUBLIC COMMENTS

The Board adopts the instant amendments to 35 Ill. Adm. Code 307, 309, and 310 by its Order accompanying this Opinion. The proposed amendments appeared in the Illinois Register on December 6, 1991, at 15 Ill. Reg. 17523 (Part 307), 15 Ill. Reg. 17523 (Part 309), and 15 Ill. Reg. 17523 (Part 310).

The Board received two public comments in this matter. On December 12, 1992, we received the first from the Secretary of State, Administrative Code Division (PC#1). That comment suggested a number of textual format corrections for compliance with the codification requirements. On January 17, 1992, the Board received a comment from the Illinois Environmental Protection Agency (PC #2). The Agency suggested a number of format and substantive corrections. Each aspect of the comments is discussed in the appropriate part of the following discussion.

The detailed discussion that follows indicates each topic on which the Board especially invited public comment. In any event, the Board construes silence as no objection to the Board's approach to each topic.

HISTORICAL OUTLINE OF BOARD PRETREATMENT REGULATION

The Illinois pretreatment rules were adopted in R86-44, 84 PCB 89, Opinion and Order of the Board of December 3, 1987. The rules appeared at 12 Ill. Reg. 2502 (Jan. 29, 1988), effective January 13, 1988.

The Board has updated the pretreatment rules in the following update rulemakings:

- R88-11 90 PCB 411, June 14, 1988; 12 Ill. Reg. 13094, effective July 29, 1988 (USEPA amendments through December 31, 1987).
- R88-18 94 PCB 237, December 17, 1988; 13 Ill. Reg. 1794, effective January 31, 1989 (USEPA amendments January 1 through June 30, 1988).
- R89-3 103 PCB 609, September 28, 1989; 13 Ill. Reg. 19243, effective November 17, 1989 (Part 307) and

- November 27, 1989 (Part 310) (USEPA amendments July 1 through December 31, 1988).
- R89-12 110 PCB 119, April 12, 1990; 14 Ill. Reg. 7608, effective May 8, 1990 (USEPA amendments January 1 through June 30, 1989).
- R90-6 Dismissed, 109 PCB 629, March 22, 1990 (No USEPA amendments July 1, 1989 through December 31, 1989).
- R90-15 Dismissed, June 20, 1991 (No USEPA amendments January 1 through June 28, 1990).
- R91-5 This docket (USEPA amendments June 29, 1990 through December 31, 1990).

DETAILED DISCUSSION

The specific amendments derived from the USEPA actions made on March 17 and June 29, 1989 affect the categorical pretreatment standards reflected in Part 307. The amendments derived from USEPA actions made on May 2, 1989 affect the program requirements reflected in Part 310. No amendments arise from the federal amendments of January 4 and April 4, 1989.

In R86-44 the Board generally referenced the 1986 edition of the Code of Federal Regulations. The Board is updating the references to all Sections up for review in this update to the 1990 edition of the Code of Federal Regulations. Pursuant to the Board's mandate in Section 7.2(a)(1) of the Act, amendments concerning directives for program approval have not been adopted.

By PC#1, the Administrative Code Division suggested that the Board update all statutory references to the 1989 version of the Illinois Revised Statutes. The Board make this revision at the main source notes to Parts 307, 309, and 310 and in the definition of "act" at Section 310.110. The Board also corrects the citations to "307.Appendix A" and "309.Appendix A" in the table of contents to Parts 307 and 309 and corrects the effective date of R88-9 in the source note to Part 307.

PART 307 SEWER DISCHARGE CRITERIA

SUBPART B: GENERAL AND SPECIFIC PRETREATMENT REQUIREMENTS

Section 307.1101 General and Specific Requirements

35 Ill. Adm. Code 307.1101 derives from 40 CFR 403.5. USEPA amended paragraph (b) at 55 Fed. Reg. 30129, July 24, 1990. The Board amends this Section to correspond with the federal

amendments.

The federal amendment of 40 CFR 403.5(b)(1) (corresponding to 35 Ill. Adm. Code 307.1101(b)(1)) is intended to add specificity to the prohibition against discharge of materials that can cause a fire or explosion hazard. See 55 Fed. Reg. 30084-87. It now specifies a flashpoint limit and a test method for the discharges. The only deviation from the federal language in subsection (b)(1) is the replacement of the citation to the federal regulation containing the test method with the corresponding Illinois Administrative Code citation.

New federal paragraph (6) (corresponding with 35 Ill. Adm. Code 307.1101(b)(11)) adds a prohibition against discharging oils into a sewer of types and in quantities that could cause treatment plant upset or pass through. See 55 Fed. Reg. 30091-92. The Board does not deviate from the federal language at new subsection (b)(11).

New federal paragraph (7) (corresponding with 35 Ill. Adm. Code 307.1101(b)(12)) adds a prohibition against discharging pollutants into a sewer that could cause toxic gases, vapors and fumes at the treatment plant in a quantity which could endanger worker health and safety. See 55 Fed. Reg. 30087-91. The Board does not deviate from the federal language at new subsection (b)(12).

New federal paragraph (8) (corresponding with 35 Ill. Adm. Code 307.1101(b)(13)) adds a prohibition against discharging into a sewer system at any point except a point designated by the POTW. See 55 Fed. Reg. 30097-99. The Board does not deviate from the federal language at new subsection (b)(13).

The Board also effects a small number of non-substantive amendments to Section 307.1101. Initially, we change the punctuation of both subsections by adding colons after the lettered subsection headings and semicolons (and the word "or," where appropriate) after each numbered subsection. The Board also adds a note to this Section that would indicate the source of this subsection. The note cites 40 CFR 403.3 and 55 Fed. Reg. 30129, July 24, 1990.

SUBPART O: ORGANIC CHEMICALS, PLASTICS AND SYNTHETIC FIBERS

Section 307.2400 General Provisions
Section 307.2401 Rayon Fibers
Section 307.2402 Other Fibers
Section 307.2403 Thermoplastic Resins
Section 307.2404 Thermosetting Resins
Section 307.2405 Commodity Organic Chemicals
Section 307.2406 Bulk Organic Chemicals
Section 307.2407 Specialty Organic Chemicals

Section 307.2490 Non-complexed Metal-bearing and Cyanide-bearing Wastestreams

The Board uses this opportunity to correct a minor, non-substantive typographical error at 35 Ill. Adm. Code 307.2400-(b)(3): the Board changes "nothwithstanding" to "notwithstanding."

On June 29, 1990, at 55 Fed. Reg. 26692, USEPA amended a number of sections in 40 CFR 414 (the Organic Chemicals, Plastics and Synthetic Fibers Category) in response to a federal judicial remand in Chemical Manufacturers Association v. EPA, 870 F.2d 177 (5th Cir. 1989). USEPA withdrew the limitations subject to the remand. 13 pollutants were deleted from 40 CFR 414.25, 414.35, 414.45, 414.55, 414.65, 414.75, and 414.85: acenaphthene, 2,4-dimethylphenol, fluoranthene, naphthalene, phenol, bis-(2-ethylhexyl)phthalate, di-N-butylphthalate, diethylphthalate, dimethylphthalate, anthracene, fluorene, phenanthrene, and pyrene. 19 pollutants were removed from 40 CFR 414.101: acenaphthene, 2,4-dimethylphenol, fluoranthene, naphthalene, phenol, bis-(2-ethylhexyl)phthalate, di-N-butylphthalate, diethylphthalate, dimethylphthalate, benzo(a)anthracene, benzo(a)pyrene, 3,4-benzofluoranthrene, benzo(k)fluoranthene, chrysene, anthracene, fluorene, phenanthrene, and pyrene. USEPA also deleted the "tetraethyl lead/alkyl halide + sodium-lead alloy" and "tetramethyl lead/alkyl halide + sodium-lead alloy" entries from 40 CFR, appendix A table under the heading "lead."

35 Ill. Adm. Code 307.2401 derives from 40 CFR 414.25. 35 Ill. Adm. Code 307.2402 derives from 40 CFR 414.35. 35 Ill. Adm. Code 307.2403 derives from 40 CFR 414.45. 35 Ill. Adm. Code 307.2404 derives from 40 CFR 414.55. 35 Ill. Adm. Code 307.2405 derives from 40 CFR 414.65. 35 Ill. Adm. Code 307.2406 derives from 40 CFR 414.75. 35 Ill. Adm. Code 307.2407 derives from 40 CFR 414.85. 35 Ill. Adm. Code 307.2490 derives from 40 CFR 414, App. A. Each of these provisions incorporates the corresponding federal limitations by reference.

For this reason, the Board updates the incorporations by reference at the appropriate places to include the revisions as embodied in the 1990 edition of the Code of Federal Regulations. This volume includes the June 29, 1990 federal amendments. This means the Board updates the references at 35 Ill. Adm. Code 307.2401(c)(1) & (d)(1), 307.2402(c)(1) & (d)(1), 307.2403(c)(1) & (d)(1), 307.2404(c)(1) & (d)(1), 307.2405(c)(1) & (d)(1), 307.2406(c)(1) & (d)(1), 307.2407(c)(1) & (d)(1), and 307.2490.

SUBPART V: NONFERROUS METALS MANUFACTURING

At 55 Fed. Reg. 31692, August 3, 1990, USEPA amended the

effluent discharge limitations¹ and pretreatment requirements at 40 CFR 421, the Nonferrous Metals Manufacturing category. This included amendments to the Metallurgical Acid Plants (subpart I), Primary Beryllium (Subpart O), Primary Molybdenum (Subpart S), Secondary Molybdenum and Vanadium (subpart T), Secondary Precious Metals (Subpart X), and Secondary Tungsten and Cobalt (subpart AC) subcategories. USEPA promulgated these amendments as a result of settlement negotiations arising from several judicial challenges to its rules originally adopted in 1984 and 1985. Primarily, the amendments change limitations based on revised estimates of treatment removal effectiveness for various pollutants. They also correct certain assumptions as to manufacturing production, revise effective dates, and effect some clarifications. USEPA published corrections to some of these amendments at 55 Fed. Reg. 36932, September 7, 1990.

Section 307.3100

35 Ill. Adm. Code 307.3100 derives from 40 CFR 421.1 through 421.5. Existing subsection (c) incorporates 40 CFR 421.3 by reference, and subsection (d) incorporates 40 CFR 421.4. USEPA amended section 421.3 at 55 Fed. Reg. 31697. New paragraph (b) waives the routine cyanide testing requirement for certain facilities in the Primary Beryllium subcategory under certain limited circumstances: an annual test for cyanide must indicate less than 0.07 mg/l cyanide, and the facility must certify that it does not generate or use cyanide. The Board updates the incorporation by reference at 35 Ill. Adm. Code 307.3100(c) to include this federal change.

In addition to the amendment in response to this federal amendment, the Board effects two minor, non-substantive amendments to Section 307.3100. First, there is no subsection (b). Rather, the subsections run (a), (c), (d), then (e). This corresponds to the federal source material (i.e., Section 307.3100(a) derived from 40 CFR 421.1, Section 307.3100(c) derived from 40 CFR 421.3, etc.; 40 CFR 421.2 is reserved), but it does not comport with the Board's usual practice of sequential numbering of subsections. For this reason, the Board adds dummy language in a new subsection (b), in order that subsections (c), (d), and (e) continue to correspond numerically with their federal counterparts. Second, the Board uses this opportunity to routinely change the date of the incorporation by reference at

¹ The Board has not adopted categorical effluent limitations that correspond with those promulgated by USEPA. Rather, the Board focuses on the categorical pretreatment standards that USEPA adopts. See discussion in opinions of December 3, 1987 in R86-44, 84 PCB 89, 94 & 103-04, and April 12, 1990 in R89-12, 110 PCB 119, 126-27 (why the Board has not yet pursued adoption of categorical effluent limitations identical-in-substance to the federal ones).

existing subsection (d) (renumbered to subsection (c)) to the 1990 edition of the Code of Federal Regulations.

Section 307.3109

35 Ill. Adm. Code 307.3109 derives from 40 CFR 421.91 through 421.96 (40 CFR Subpart I). Existing subsection (b) incorporates 40 CFR 421.91 by reference, subsection (c)(1) incorporates 40 CFR 421.95, and subsection (d)(1) incorporates 40 CFR 421.96. USEPA amended section 421.96 at 55 Fed. Reg. 31697. The effect of this amendment is to remove molybdenum as a limited pollutant. The Board updates the incorporation by reference at subsection (d)(1) to reflect this federal amendment. As a routine, non-substantive matter, the Board further updates the incorporation by reference at subsections (b) and (c)(1) to reflect the more recent edition of the Code of Federal Regulations.

Section 307.3115

35 Ill. Adm. Code 307.3115 derives from 40 CFR 421.150 through 421.156 (40 CFR Subpart O). Existing subsection (b) incorporates 40 CFR 421.151 by reference, and subsection (d)(1) incorporates 40 CFR 421.156. USEPA amended section 421.156 at 55 Fed. Reg. 31700. The effect of these amendments is to increase the limitation for fluoride discharges for beryllium hydroxide supernatant and to add beryllium, total chromium, copper, total cyanide, ammonia-nitrogen, and fluoride limitations for certain equipment and activities. These equipment and activities include beryl ore gangue dewatering, bertrandite ore gangue dewatering, beryl ore processing, aluminum iron sludge area wastewater, bertrandite ore leaching scrubber, and bertrandite ore countercurrent and decantation scrubber.

The Board amends Section 307.3115 in response to the federal amendments. The Board updates the incorporation by reference at subsection (d)(1) to reflect this federal amendment. As a routine, non-substantive matter, the Board further updates the incorporation by reference at subsection (b) to reflect the more recent edition of the Code of Federal Regulations.

Section 307.3119

35 Ill. Adm. Code 307.3119 derives from 40 CFR 421.210 through 421.216 (40 CFR Subpart S). Existing subsection (b) incorporates 40 CFR 421.211 by reference, and subsection (d)(1) incorporates 40 CFR 421.216. USEPA amended section 421.216 at 55 Fed. Reg. 31702. The effect of these amendments is to remove molybdenum as a limited pollutant for certain equipment and activities. These equipment and activities are molybdenum sulfide leachate, roaster SO₂ scrubber and molybdic oxide

leachate.

The Board amends Section 307.3119 in response to the federal amendments. The Board updates the incorporation by reference at subsection (d)(1) to reflect this federal amendment. As a routine, non-substantive matter, the Board further updates the incorporation by reference at subsection (b) to reflect the more recent edition of the Code of Federal Regulations.

Section 307.3120

35 Ill. Adm. Code 307.3120 derives from 40 CFR 421.220 through 421.226 (40 CFR Subpart T). Existing subsection (b) incorporates 40 CFR 421.221 by reference, and subsection (d)(1) incorporates 40 CFR 421.226. USEPA amended section 421.226 at 55 Fed. Reg. 31705. The effect of these amendments is to remove molybdenum as a limited pollutant and to change the limitations for arsenic, chromium, lead, nickel, iron, molybdenum, and ammonia-nitrogen for certain equipment and activities. Those equipment and activities are leach tailings and molybdenum filtrate solvent extraction raffinate. The amendments also add limitations for those pollutants for pure grade molybdenum.

The Board amends Section 307.3120 in response to the federal amendments. The Board updates the incorporation by reference at subsections (d)(1) to reflect these federal amendments. As a routine, non-substantive matter, the Board further updates the incorporation by reference at subsection (b) to reflect the more recent edition of the Code of Federal Regulations.

Section 307.3124

35 Ill. Adm. Code 307.3124 derives from 40 CFR 421.260 through 421.266 (40 CFR Subpart X). Existing subsection (b) incorporates 40 CFR 421.261 by reference, subsection (c)(1) incorporates 40 CFR 421.265, and subsection (d)(1) incorporates 40 CFR 421.266. USEPA amended sections 421.261, 421.265, and 421.266 beginning at 55 Fed. Reg. 31705. The effect of these amendments is to add a new paragraph defining "combined metals" as the total of gold, platinum, and palladium and to replace individual limitations for these metals with limitations for "combined metals."

The Board amends Section 307.3124 in response to the federal amendments. The Board updates the incorporation by reference at subsections (b), (c)(1), and (d)(1) to reflect these federal amendments.

Section 307.3129

35 Ill. Adm. Code 307.3129 derives from 40 CFR 421.310 through 421.316 (40 CFR Subpart AC). Existing subsection (b)

incorporates 40 CFR 421.311 by reference, subsection (c)(1) incorporates 40 CFR 421.315, and subsection (d)(1) incorporates 40 CFR 421.316. USEPA amended sections 421.315 and 421.316 beginning at 55 Fed. Reg. 31716. The effect of these amendments is to revise all limitations for cobalt in this subcategory.

The Board amends Section 307.3129 in response to the federal amendments. The Board updates the incorporation by reference at subsections (c)(1) and (d)(1) to reflect these federal amendments. As a routine, non-substantive matter, the Board further updates the incorporation by reference at subsection (b) to reflect the more recent edition of the Code of Federal Regulations.

PART 309
PERMITS

SUBPART A: NPDES PERMITS

Section 309.103 Application - General

The USEPA amendments of July 24, 1990, at 55 Fed. Reg. 30082, have a significant impact on certain POTWs. They impose significant new reporting and recordskeeping requirements, and in some instances, they require periodic whole effluent toxicity testing as part of the permit application process.

USEPA added new paragraphs (j)(1) through (j)(4) to 40 CFR 122.21. These new paragraphs (applicable to state programs pursuant to 40 CFR 123.25, see 55 Fed. Reg. 30128) require certain POTWs to provide USEPA (or the NPDES permit-issuing state) with the results of whole effluent toxicity testing:

POTWs which must provide this information:

1. All POTWs with a design influent capacity of one million gallons per day (MGD) or more, and
2. All POTWs required to have a pretreatment program; and

Other POTWs of which USEPA (or the NPDES permit-issuing state) may require this information based on consideration of certain factors:

1. The variability of effluent pollutants or pollutant parameters,
2. The dilution ratio in the receiving stream,
3. Existing controls on point and nonpoint sources and maximum daily loading in the receiving stream and the relative contribution of the individual POTW,

4. Receiving stream characteristics (known water quality impairment; whether it is a coastal water, a Great Lake, or an outstanding natural resource; etc.), and
5. Other considerations that could cause or contribute to adverse water quality impacts (including the history of toxic impact and POTW compliance problems).

This testing must have occurred since the latest permit reissuance or modification. The POTW must submit this information together with its NPDES permit application, and if it has an approved pretreatment program, a written technical evaluation of the need to revise local pretreatment limitations must accompany the results of the testing.

The existing NPDES regulations include provision for whole effluent toxicity testing. 35 Ill. Adm. Code 309.103(a)(3) confers the determination on the Agency, pursuant to Section 39 of the Act, to require such testing for the POTW to demonstrate compliance with acute and chronic toxicity criteria. See 35 Ill. Adm. Code 302.621 & 302.630. It is not clear that this Agency determination to require testing is concurrent with the authority now required by USEPA for state programs as a result of these federal amendments. On the other hand, it is clear that the present rule does not include concrete circumstances under which a POTW must perform the testing and submit the results to the Agency together with an evaluation of revising local limits.

Section 13.3 of the Act requires the Board to adopt regulations that are identical in substance to federal regulations promulgated by USEPA pursuant to sections 307(b), (c), and (d) and 402(b)(8) and (b)(9) of the Clean Water Act, 33 U.S.C. §§ 1317(b), (c) & (d) & 402(b)(8) & (b)(9). USEPA asserts these provisions, at least in part, as the authority for these amendments. See 55 Fed. Reg. 30082 & 30128-29 (July 24, 1990). Therefore, the Board adopts the new federal requirements nearly verbatim.

In so doing the Board renumbers existing Section 309.103(a)(3) to Section 309.103(a)(3)(A) and places the identical in substance rule at Section 309.103(a)(3)(B). The Board has deviated from the federal language only to the extent necessary to comport with codification as a state rule. This requires the incorporation of 40 CFR 122.62 (a) by reference. The Board incorporates this reference at this location, rather than at the incorporations by reference section at 35 Ill. Adm. Code 310.107, because this incorporation is specific to this provision, and Section 310.107 is specific to Part 310. The incorporated federal provision recites the reasons for permit modification since which the POTW must have last performed the toxicity testing. Additionally, the Board adds language to subsection (a) that clarifies that the Agency determination as to

toxicity testing is made pursuant to Section 39 of the Act, and is, therefore, a permit determination appealable to the Board. The Board also adds a note to subsection (a)(3)(A) to indicate that 40 CFR 122.21(j) (1990), as amended at 55 Fed. Reg. 30128 (July 24, 1990), is the source of subsections (a)(3)(B) through (a)(4).

By PC #2, the Agency suggests that the Board correct "Director" to read "Agency" at subsection (a)(3)(C)(v). The Board adopts this correction, consistent with the rendition throughout the balance of the text of this Section.

PART 310
PRETREATMENT PROGRAMS

SUBPART A: GENERAL PROVISIONS

Section 310.103 Federal Law
Section 310.105 Confidentiality
Section 310.107 Incorporations by Reference
Section 310.110 Definitions

The Board uses this opportunity to update incorporations by reference and make a small number of format corrections. None of these amendments are prompted by recent federal amendments.

The Board amends 35 Ill. Adm. Code 310.103(a) and (b) to delete the volume dates for the Code of Federal Regulations. These references are not incorporations by reference. Rather, they are recitations of authorities reserved by USEPA. USEPA is not restricted to any but the latest version of its rules for authority for its actions. Therefore, the dates are superfluous and possibly misleading.

The Board adds the date of the Code of Federal Regulations at 35 Ill. Adm. Code 310.105(c) for clarity and consistency with other incorporated citations. Further, the Board updates the format of the Board Note and the version of the Code of Federal Regulations cited therein.

The Board updates the date of the Code of Federal Regulations referenced at 35 Ill. Adm. Code 310.107(b). This does not include 40 CFR 128.140(b) (1977), which no longer exists in the 1990 edition of the Code.

In response to PC#1, the Board adds Section source notes to Sections 310.103 and 310.105.

Section 310.110 Definitions

USEPA added a definition of "significant new user" to 40 CFR 403.3(t) at 55 Fed. Reg. 30129, July 24, 1990. This corresponds

to 35 Ill. Adm. Code 310.107, the definitions section of Part 310. Under this definition, a "significant new user" is any industrial user (defined in this section) subject to categorical pretreatment standards or which meets certain conditions:

1. It discharges an average of 25,000 gallons per day (GPD) of process wastewater to the POTW,
2. Its process wastestream contributes five percent or more of the dry weather loading of the POTW, or
3. It has been designated as such by the POTW due to a reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard.

The second subsection of this definition includes an exception (which does not apply to the first subsection): an industrial user may petition the local authority and the local authority may determine that the user has no reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard. Under such a determination the industrial user is not a significant industrial user.

The Board adds this definition with only minor deviation from the federal text to comport with codification requirements. One format change involves the placement of the exception clause. USEPA states the definition itself as a paragraph with two subparagraphs. The federal exception appears as a separate paragraph that applies only to the second of the two subparagraphs. The Board embodies the exception within the subsection that corresponds to the second federal subparagraphs. The exception is germane to only one half of the definition, and the Board felt that this structure more clearly conveys this fact. This is further true because Board definitions subsections do not normally include labels that would facilitate external reference to an individual subsection at the exclusion of another.

By PC #2, the Agency highlights the potential for ambiguity in the proviso clause in the proposed new definition of "significant industrial user." The Agency desires greater clarity that this exception applies only to those industrial users that discharge an average of 25,000 gallons per day or more, and not to industrial users subject to categorical pretreatment standards. The Agency suggests that the Board should place the exception language at the beginning of the second subsection of this definition, as follows: "Except, upon a finding that an industrial user . . . , any other industrial user that discharges an average of 25,000 gallons per day or more" The Board appreciates the Agency's observation with regard to the need for greater clarity, but the exception clause is about 80 words long. In fact, the Board believes that

placement of this long of a clause at the beginning of this subsection would have an even greater potential for ambiguity. In fact, USEPA embodies this exception in a separate subsection at 40 CFR 403.3(t)(2), as amended at 55 Fed. Reg. 30129 (July 24, 1990). That, and the fact that the Board does not number its definitions like USEPA, are the reasons we placed the proviso at the end. Nevertheless, the Board agrees that greater clarity is necessary. We therefore reword the beginning of the clause as follows (additions underlined): "except, upon a finding that an industrial user meeting the criteria of this second subsection of this definition . . ." We believe that this maximizes the clarity of this definition without rendering this definition more convoluted and potentially confusing than the federal language from which it derives.

By PC #2, the Agency also recommends that the Board add the word "by" to the definition of "municipal sludge." Although we did not propose any amendment to this definition, the Board adopts the Agency-recommended correction.

SUBPART B: PRETREATMENT STANDARDS

The Board amends various Sections in 35 Ill. Adm. Code 301.- Subpart B not prompted by federal amendments. These are updates of Code of Federal Regulations citations. Several other amendments derive from federal amendments.

Section 310.201 General Prohibitions

Section 310.202 Specific Prohibitions

Section 310.210 Specific Limits Developed by POTW

USEPA amended 40 CFR 403.5 at 55 Fed. Reg. 30129. Paragraph (a) corresponds to 35 Ill. Adm. Code 310.201. Paragraph (b) corresponds to 35 Ill. Adm. Code 307.1101(b) and 310.202. Paragraph (c) corresponds to 35 Ill. Adm. Code 310.210. Paragraph (e) is a solely federal enforcement provision.

The effect of the federal amendments to paragraph (b) is to add several prohibited discharges. The Board discusses the amendments to this provision above, with Section 307.1101, supra, at page 3. The effect of the amendments to paragraph (a)(2) is to expand the universe of specific prohibitions for which an affirmative defense is available to include two of the three new prohibited discharges: discharges of mineral oil, nondegradable cutting oils, etc. and discharges of pollutants that can cause toxic vapors and gases. The affirmative defense is already available for violations of 40 CFR 403.5(a)(1), (b)(3), (b)(4), and (b)(5) (corresponding to 35 Ill. Adm. Code 310.201(a), 307.1101(b)(6), 307.1101(b)(7), and 307.1101(b)(8) and (b)(9), respectively).

These recent federal amendments highlight an apparent

deficiency in the existing text of 35 Ill. Adm. Code 310.201(b) that the Board corrects as it updates that text to correspond to the new federal language. Section 310.210(b) allows the affirmative defense in the case of any of the various types of prohibited discharges. The corresponding federal language is selective as to the instances when the defense is available. The Board amends this provision to correspond more accurately with the federal rule. The Board further adds the relative pronoun "that" to subsection (b) to correspond with the federal text. We update the Board Note to indicate the most recent version of the Code of Federal Regulations, indicate the source of the more recent federal amendments, and update the format of the Board Note.

35 Ill. Adm. Code 310.202, which roughly corresponds to the 40 CFR 403.5(b) preamble, acts as a road map to 35 Ill. Adm. Code 307.Subpart B, which actually sets forth the prohibited discharges, in addition to prohibitions relating to mercury and cyanide. The regulatory language would track the federal prohibitions more closely if the Board amends the citation to "35 Ill. Adm. Code 307.Subpart B" to "35 Ill. Adm. Code 307.1101(b)." The Board effects such an amendment. The Board also changes the citation to the Code of Federal Regulations to the recent edition and updates the format of the Board Note.

The effect of the federal amendments to paragraph (c) is to impose a continuing obligation on POTWs with approved pretreatment programs. These POTWs must continue to develop specific limits as necessary. They also must enforce these limits. The Board adds the new federal language at 35 Ill. Adm. Code 310.210(a). The Board also changes the citation to the Code of Federal Regulations to the recent edition, adds a citation to the source of the federal amendments, and updates the format of the Board Note.

Section 310.220 Categorical Standards

Section 310.221 Category Determination Request

Section 310.222 Deadline for Compliance with Categorical Standards

Section 310.230 Concentration and Mass Limits

Section 310.232 Dilution

Section 310.233 Combined Wastestream Formula

35 Ill. Adm. Code 310.220 derives from the preamble to 40 CFR 403.6. 35 Ill. Adm. Code 310.221 derives from 40 CFR 403.6(a). 35 Ill. Adm. Code 310.222 derives from 40 CFR 403.6(b). 35 Ill. Adm. Code 310.230 derives from 40 CFR 403.6(c). 35 Ill. Adm. Code 310.232 derives from 40 CFR 403.6(d). 35 Ill. Adm. Code 310.233 derives from 40 CFR 403.6(e).

USEPA amended the preamble language of 40 CFR 403.6 at 55

Fed. Reg. 30129, July 24, 1990. The amendment changed a citation to the general prohibitions of section 403.5 to a citation to the "applicable pretreatment standards and requirements" of part 403. The corresponding Illinois standards and requirements appear at 35 Ill. Adm. Code 307.1101 and 310. The Board amends the citation at 35 Ill. Adm. Code 310.220 to "the general prohibitions established in Sections 310.201 through 210.211" (an obvious error) to "the standards and requirements set forth at 35 Ill. Adm. Code 307.1101 and 310."

In addition to the amendment prompted by the federal amendment, the Board effects other, non-substantive amendments. For each of 35 Ill. Adm. Code 310.220 through 310.233, the Board also changes the citations to the Code of Federal Regulations to the recent edition, adds a citation to the source of the federal amendments, and updates the format of the Board Notes.

SUBPART C: REMOVAL CREDITS

310.330 Exception to POTW Pretreatment Program

35 Ill. Adm. Code 310.330 derives from 40 CFR 403.7(d). USEPA did not amend the corresponding federal provision during the update period. Rather, the Board effects non-substantive revisions to this Section. The Board changes the citation to the Code of Federal Regulations to the recent edition and updates the format of the Board Note.

SUBPART E: POTW PRETREATMENT PROGRAMS

310.510 Pretreatment Program Requirements: Development and Implementation by POTW

35 Ill. Adm. Code 310.510 derives from 40 CFR 403.8(f). USEPA extensively amended the corresponding federal provision at 55 Fed. Reg. 30129, July 24, 1990. The effect of the federal amendments is to revise the section title, to reword the preamble language, and to impose several new requirements. The object of the title change and rewording of the preamble is to more pointedly state that "POTW pretreatment programs must be based on legal authorities and procedures which shall at all times be fully and effectively exercised and implemented." 55 Fed. Reg. 30127.

The major thrust of the amendments to 40 CFR 403.8 involves increased regulation of significant industrial users. This Opinion discusses the new definition of "significant new user," supra at page 11. At 40 CFR 403.8(f)(1)(iii) (corresponding with 35 Ill. Adm. Code 310.510(a)(3)), the federal amendments require the POTW to issue enforceable permits or "individual control mechanisms" to significant industrial users, and they specify a number of conditions these mechanisms must include. These

conditions include a duration not to exceed five years, a statement of non-transferability without prior notice to the POTW, discharge limitations, monitoring and recordskeeping requirements, and a statement of applicable penalties for violation. USEPA amended paragraph (f)(1)(vi)(B) (corresponding with Section 310.510(a)(6)(B)) to require the POTW to seek remedies for non-compliance with the conditions in a permit or individual control mechanism.

Another new requirement imposed on the POTW relating to significant industrial users is the requirement to determine industrial users' status as such and to notify the Agency and the user. New federal paragraph (f)(6) (corresponding with Section 310.510(f)) requires each POTW to prepare lists of entities meeting various criteria of the definition of "significant new user" and submit the lists to the Agency. (The lists and subsequent modifications are deemed approved 90 days after submission.) The amendment to paragraph (f)(2)(iii) (corresponding with Section 310.510(b)(3)) requires the POTW to notify significant industrial users of their status as such within 30 days after Agency approval of the lists or subsequent modification. New language at the end of paragraph (f)(2)(v) (corresponding with Section 310.510(b)(5)) requires POTWs to sample and analyze effluent from each significant industrial user at least once a year, and to determine at least once every two years whether each user needs a plan to control slug discharges. If such control is necessary, the amended rule includes minimum requirements for plan contents.

Other amendments to 40 CFR 403.8(f) relate to enforcement, some of which clarify various provisions. Part of the amendment to 40 CFR 403.8(f)(1)(vi)(B) (corresponding with 35 Ill. Adm. Code 310.510(a)(6)(B)) now specifies that the Agency may independently seek relief when it feels the monetary penalty sought by the POTW against a POTW is insufficient. The procedural provision relating to ex parte temporary injunctive relief is now gone from this provision. At 40 CFR 403.8(f)(2)(vii) (corresponding with Section 310.510(b)(7)), the provision requiring newspaper notice of industrial users found in violation during the preceding 12 months, the focus has changed to noncompliant users, and noncompliance is now extensively defined for the purposes of this notice requirement. New federal paragraph (f)(5) (corresponding with Section 310.510(e)) requires POTWs to assemble an enforcement response plan for investigation of noncompliance. This provision outlines minimum plan requirements.

The Board adopts amendments to correspond with the new federal amendments. The Board deviates from the federal language minimally--only to the extent necessary to comport with the state regulatory format. Additionally, the Board repunctuates various subsections of Section 310.510 for consistency, updates the

reference to the Code of Federal Regulations in the Board Note, and adds a citation to the source of the more recent federal amendments.

In response to PC#1, the Board corrects the reference to "this Part" at subsection (a)(3)(D) and the reference to "310. Subpart F" at subsection (a)(4)(B).

In response to PC #2, the Board adds a comma between the words "permit" and "order" in subsection (a)(3). This is a correction to the pre-existing language of this subsection, to correspond to that of 40 CFR 408.3(f)(1)(iii). The Agency further highlights a few other editorial errors in the text of this Section. In response to the Agency suggestions, the Board changes subsection (a)(3)(D) to read "this Part . . .," deleting the reference to "403," erroneously left in during editing the federal text; we render "containment structures" in the plural at subsection (b)(5)(D); and we render the language "non-substantial modification" at subsection (f). With regard to this last revision, the listing of substantial modifications at Section 310.922 would not appear to contemplate the submission of the information required by Section 310.510(f). Nevertheless, the word "nonsubstantial" appears in the federal rule from which subsection (f) derives, and the addition of this word does add clarity. Therefore, the Board adds it as suggested by the Agency.

However, we do not capitalize "such" in subsection (a)(3)(E) in response to the Agency's comment. Rather, the Board corrects subsection (b)(3)(E), so there is now a comma, rather than a period, after "however." This obviates the capitalization suggested by the Agency.

SUBPART F: REPORTING REQUIREMENTS

310.611 Requirements for Non-Categorical Standard Users

35 Ill. Adm. Code 310.611 derives from 40 CFR 403.12(h). USEPA amended 40 CFR 403.12(h) at 55 Fed. Reg. 30131, July 24, 1990). These amendments impose significant semi-annual reporting requirements on significant non-categorical users. The significant noncategorical industrial user must assemble these reports using specified procedures and submit them to the control authority (the Agency, unless the POTW has an authorized pretreatment program) unless the POTW has already done so. This provision defines a "significant noncategorical user" as a significant industrial user that is not subject to categorical pretreatment standards.

The Board adopts the federal amendments with only as much revision as is required for codification in the Illinois rule. In keeping with this, the Board adopts the language of this

Section as suggested by the Agency. We render the end of the fourth sentence as follows: ". . . approved by the Agency." As the Agency notes, this embodies greater consistency between the state and federal regulatory systems. The Board also amends the Board note to reflect the most recent edition of the Code of Federal Regulations and adds a reference to the source of the federal amendments.

310.613 Notification of Changed Discharge

310.635 Notification of Discharge of Hazardous Waste

35 Ill. Adm. Code 310.613 derives from 40 CFR 403.12(j). New 35 Ill. Adm. Code 310.635 derives from new 40 CFR 403.12(p). USEPA amended 40 CFR 403.12(j) and added 40 CFR 403.12(p) at 55 Fed. Reg. 30131, July 24, 1990). New paragraph (p) requires industrial users to notify the POTW and the Agency of any discharge of a material that would otherwise be a hazardous waste pursuant to 40 CFR 261 (corresponding with 35 Ill. Adm. Code 721). If the discharge is greater than 100 kilograms (kg) (about 221 pounds (lbs.)) per month, the provision specifies specific informational requirements. The initial notification must occur within 180 days of the effective date of the rule, within 180 days of when the discharge begins, or within 90 days of the effective date of regulations for newly-listed hazardous wastes. Only one notification is required for each hazardous waste discharged, and no notification is required where the user has already reported under the self-monitoring requirements of 40 CFR 403.12(b), (d), and (e) (corresponding with 35 Ill. Adm. Code 310.602, 310.604, and 310.605). The threshold quantity of hazardous waste that triggers the reporting requirement is 15 kg (about 33 lbs.), unless the waste is an acutely hazardous waste, in which the user must report the discharge of any quantity. The user must certify with the report that it has a program for the reduction of hazardous waste volume and toxicity to the extent economically practical.

The federal amendment of 40 CFR 403.12(j) (corresponding with 35 Ill. Adm. Code 310.613) is related to the addition of paragraph (p), but it imposes an additional, independent requirement. Under amended paragraph (j), a user must notify the POTW in advance of any substantial change in the character or quantity of any listed and characteristic hazardous wastes in its discharge.

The Board adopts of the federal amendments with the minimal, non-substantive revisions necessary to comport with the Illinois regulatory format. The Board adopts the Agency-recommended designation "Manager, Division of Land Pollution Control," see PC #2, rather than the proposed language, "Manager, Division of Water Pollution Control," at 35 Ill. Adm. Code 310.635(a)(1), and "Division of Land Pollution Control," rather than "Division of Water Pollution Control," at subsection (c). We further revise

"Discharges are exempt . . ." at subsection (b) to read "Dischargers are exempt . . ." in response to PC #2. The Board further updates the Board Notes at both Section 310.613 and 310.635 to reflect the most recent edition of the Code of Federal Regulations and to reflect the source of the more recent federal amendments.

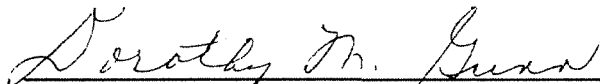
310.635 Fraud and False Statements

35 Ill. Adm. Code 310.633 derives from former 40 CFR 403.12(n). USEPA amended 40 CFR 403.12(n) at 55 Fed. Reg. 30131, July 24, 1990). The amendments to this provision broaden the perjury warning to include the definition at Section 309(c)(6) of the Clean Water Act, 33 U.S.C. § 1319(c)(6), which renders "responsible corporate officers" subject to penalties for perjury.

The Board adopts the federal amendment without substantive change. The Board further revises the citation to "Sections 310.602, 310.604, 310.605, 310.611, 310.612, and 310.621" to "this Subpart." The corresponding federal citation is to "this section" (40 CFR 403.12), for which the corresponding Board rules are located throughout 35 Ill. Adm. Code 310.Subpart F. The Board changes the reference in the Board Note to the latest edition of the Code of Federal Regulations and adds a citation to the source of the later federal amendments.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Opinion was adopted on the 23rd day of January, 1992, by a vote of 5-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board