

ILLINOIS POLLUTION CONTROL BOARD  
May 11, 1989

IN THE MATTER OF: )  
 )  
PRETREATMENT UPDATE ) R89-3  
(7/1/88 through 12/31/88) )

PROPOSAL FOR PUBLIC COMMENT

PROPOSED OPINION OF THE BOARD (by J. Marlin):

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 Proposed 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) do 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 July 1 through December 31, 1988. The following Federal Registers are included:

53 Fed. Reg. 40610      October 17, 1988  
53 Fed. Reg. 52369      December 27, 1988

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 POTW treatment plants 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. 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.

The Illinois pretreatment rules were adopted in R86-44, Opinion and Order of the Board of December 3, 1987. The rules appeared on January 29, 1988 at 12 Ill. Reg. 2502. They were filed with the Secretary of State on January 13, 1988.

The pretreatment rules were recently amended in the following update rulemakings:

- R88-11      June 14, 1988; 12 Ill. Reg. 13094, effective July 29, 1988 (USEPA amendments through December 31, 1987).
- R88-18      December 17, 1988; 13 Ill. Reg. 1794, effective January 31, 1989 (USEPA amendments through June 30, 1988).
- R89-3      This Docket; (USEPA amendments through December 31, 1988)

The specific amendments derived from the USEPA actions made on December 27, 1988 affect the categorical pretreatment standards reflected in Part 307. The amendments derived from USEPA action made on October 17, 1988, 1988 affect the program requirements reflected in Part 310.

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 1988 edition of the Code of Federal Regulations. Pursuant the Board's mandate in Section 7.2(a)(1) of the Act, amendments concerning directives for program approval have not been adopted.

#### PART 307

#### SUBPART CP: ALUMINUM FORMING

As no easy method for listing the changes Section by Section is available, the amendments are categorized by subject, as in the Federal Register. Due to the structure of the amendments, all four pages, 53 Fed. Reg. 52369 through 52372 should be reviewed for amendments.

#### Oil and Grease Amendments:

A change was made in certain parts of 40 CFR 467 amending the oil and grease alternate monitoring parameter for total toxic organics (TTO) for Pretreatment Standards for Existing Sources (PSES). These revisions are intended to provide adequate insurance that the TTO limits are met when oil and grease is maintained below 52 mg/L for any one day and 26 mg/L for any one month. The Sections affected by this change are 35 Ill. Adm Code

307.7701(c), 307.7702(c), 307.7703(c), 307.7704(c), 307.7705(c) and 307.7706(c). Each Section has had its incorporation by reference language updated with the Federal Register citation of the amendment, 53 Fed. Reg. 52369, December 27, 1988.

Flow Allowances for the Cleaning or Etching Rinse Amendments:

An amendment revises the BAT and PSES flow allowances for cleaning or etching rinses based on two-stage countercurrent cascade rinsing that achieves 72 percent flow reduction instead of 90 percent. Both affected Sections, 307.7703(c) and 307.7704(c), have been updated to reflect the amendment from 53 Fed. Reg. 52369, December 27, 1988.

Another amendment from 53 Fed. Reg. 52369, December 27, 1988, adds the definition of a "hot water seal" to 40 CFR 467.02. The Section affected, 307.7700(b), has been updated to reflect the amendment.

PART 310

SUBPART A: GENERAL PROVISIONS

Section 310.107

40 CFR 128.140(b) (1977) has been added to the incorporation by reference list. Most year references have been updated to reflect 1988, with several exceptions, including the above citation.

Section 310.110

The definition for "new source" has been amended to cross-reference the new definition in Section 310.111. All year references have been updated to reflect 1988.

Section 310.111

This Section was derived from 40 CFR 403.3(k), added at 53 Fed. Reg. 40610, October 17, 1988. It defines "new source" and the requirements to meet the definition. Subsection (d) was derived from 40 CFR 403.6(b), amended at 53 Fed. Reg. 40611, October 17, 1988. Subsection (d) states what new sources must install to meet applicable pretreatment standards, and the time frame in which they must meet the standards.

SUBPART B: PRETREATMENT STANDARDS

Section 310.221

This Section was derived from 40 CFR 403.6, amended at 53 Fed. Reg. 40611, October 17, 1988. The amendment replaces the current required certification statement by an applicant with a new version.

#### Section 310.222

This Section was derived from 40 CFR 403.6(b), amended at 53 Fed. Reg. 40611, October 17, 1988. The amendment adds a subsection to address compliance deadlines for "new sources" which was added in this update. The major language was added to the new Section addressing new sources, 310.111, which will apply to 35 Ill. Adm. Code 307.

#### Section 310.230

This Section was derived from 40 CFR 403.6(c), amended at 53 Fed. Reg. 40611, October 17, 1988. It adds several new subsections. In general, the amendments change the legal status of equivalent concentration or mass limits calculated by control authorities from production based categorical standards.

One converts a production based standard to a mass limitation by multiplying the limit in the standard by an appropriate production rate. The production rate is based upon a reasonable measure of the facility's actual long-term average daily production (e.g., the daily average during a representative year). This ensures that facilities operating below full capacity are treating their wastewater to the extent required by the Federal Clean Water Act's technology-based pretreatment requirements, rather than reducing their level of treatment due to unused production capacity. This approach also ensures equity among facilities in the same industry, regardless of their design capacity.

Also, the amendment requires the industrial user to notify the control authority within 2 business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. The control authority will then adjust the equivalent mass and concentration limits to reflect these changes. Any user not notifying the control authority of such anticipated change will be required to meet the mass or concentration limits, in its permit or authorization to discharge, which were based on the original estimate of the long term average production rate.

One final minor change from the federal language was made in subsection (b). The federal language states "the control authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day of effluent concentration..." The Board believes "of" is a typographical error and it should be "or". Thus, the subsection is amended by substituting "or" in place of "of".

#### Section 310.232

This Section was derived from 40 CFR 403.6(d), amended at 53 Fed. Reg. 40611, October 17, 1988. The effect of the amendments

adding the words " or requirement" in two places requires the industrial user to obey requirements as well as pretreatment standards.

### Section 310.233

This Section was derived from 40 CFR 403.6(e), amended at 53 Fed. Reg. 40611, October 17, 1988. One amendment adds language to subsection (a)(1), (a)(2) and subsection (d), the proviso to which (a)(1) and (a)(2) are subject. Subsection (a)(1) specifies how the control authority shall derive alternative concentration limits. Subsection (a)(2) specifies how the control authority shall derive the alternative mass limits. One factor common in both formulas is the average daily flow (D). Prior to the amendment, the average daily flow was to be taken from only boiler blowdown streams and non-contact cooling streams. The amendment adds that in addition to boiler blowdown streams and non-contact cooling streams, the average daily flow may also be taken from stormwater streams and demineralizer backwash streams, subject to subsection (d).

Subsection (d) is amended to also include "stormwater streams and demineralizer backwash". Both stormwater streams and demineralizer backwash are subject to the same conditions as the blowdown and non-contact cooling streams.

A new subsection (f) was also added. It requires that where treated regulated process wastestream is combined before treatment with wastewaters other than those generated by the regulated process, the industrial user may monitor either the segregated process wastestream or the combined wastestream for the purpose of determining compliance with pretreatment standards. It continues to state the requirements for each choice of monitoring location and once established, the industrial user can change monitoring locations only with approval of the control authority. Finally, it requires the control authority to ensure that any change in the monitoring points does not substitute dilution for adequate treatment to achieve compliance with applicable standards.

## SUBPART E: POTW PRETREATMENT PROGRAMS

### Section 310.502

This Section was derived from 40 CFR 403.8(b), amended at 53 Fed. Reg. 40612, October 17, 1988. The only amendment made to this Section is updating the board note. For it appears that the state language already reflects the substantive changes made in the federal amendment.

### Section 310.510

This Section was derived from 40 CFR 403.8(f), amended at 53 Fed. Reg. 40612, October 17, 1988. One amendment to subsection

(a)(3) was not adopted since the subject word, contract(s), does not appear in current State text as discussed in the R86-44 Opinion at p. 50. Basically, the word is not present in the Illinois regulations because units of government appear to have local authority to regulate by ordinance, which was the preference of commenters of the R86-44 Opinion. Also, one commenter in R86-44 pointed out that contracts appears to be inconsistent with control through ordinances.

However, revision has occurred in subsection (a)(6)(A), relating to POTW's remedies for noncompliance. The amendment allows all POTW's to be able to seek or assess civil or criminal penalties of at least \$1000 a day for each violation by industrial users of pretreatment standards and requirements. For POTW's to obtain this authority, they must submit a request for approval of a program modification in accordance with Section 310.Subpart K (proposed for adoption) by November 16, 1989. This November, 1989 date is based on the assumption that a statutory provision exists to allow approval of program modification. Comment is solicited whether such statutory authority does exist.

Also, a new subsection (d) was added. It clarifies that the development of local limits (or a demonstration that they are not necessary) is a prerequisite to POTW program approval (and the continuing legal acceptability of a local program).

#### Section 310.522

This Section was derived from 40 CFR 403.9(b), amended at 53 Fed. Reg. 40612, October 17, 1988. The federal amendment is the deletion of the word "contract" and "contracts" from subsections (a)(2) and (b), respectively. For contracts are no longer considered an adequate enforcement mechanism by the USEPA and the words should not appear in the state language as discussed in Section 310.510. Most references to the words "contract" were deleted from the state language; these two references were inadvertently left in.

#### Section 310.531

This Section was derived from 40 CFR 403.9(e), amended at 53 Fed. Reg. 40612, October 17, 1988. The amendment adds a 60 day deadline date within which time the Agency must make its preliminary determination that the submission meets the requirements of Section 310.522 and if appropriate, Section 310.524.

#### Section 310.542

This Section was derived from 40 CFR 403.11(b), amended at 53 Fed. Reg. 40613, October 17, 1988. The amendment lengthens the amount of time the Agency has to determine whether a submission meets the necessary completeness requirements from 5 days to 20 days. The amendment also replaces the words "credit

authorization" with "allowance approval".

Additionally, the Federal Register language changes the reference from Section 403.7(e) to 403.7(d). However, this appears to be a typographical error and no corresponding change is made in the Illinois regulations.

#### SUBPART F: REPORTING REQUIREMENTS

##### Section 310.602

This Section was derived from 40 CFR 403.12(b), amended at 53 Fed. Reg. 40613, October 17, 1988. One amendment allows industrial users who have submitted information to USEPA pursuant to 40 CFR 128.40(b) (1977), to not have to submit this information again. The Board proposes to retain the current federal language. Comment is solicited on this proposal.

Another amendments requires new sources to submit information on the method of pretreatment that it intends to use to meet applicable pretreatment standards. It also requires estimates for flow measurement, subsection (d), and measurement of pollutants, subsection (e).

Another change is the replacement of two subsections, (e)(3) and (e)(4) with simpler requirements for taking samples to demonstrate a preliminary picture of an industrial user's processes and wastestream characteristics to the Agency. The reduced sampling for the baseline report will not affect other sampling and analysis requirements.

Amended subsection (e)(3) requires that, except for five named pollutants, the industrial user must obtain 24 hour composite samples through flow-proportioned techniques where feasible. Grab samples are not required for pH, cyanide, total phenols, oil and grease and sulfide because they degrade too rapidly for the 24 composite method. Unlike the NPDES rules, temperature, residual chlorine and fecal coliform are not required because they are not regulated under categorical pretreatment standards and thus need not be reported. Subsection (e)(4) establishes a minimum sampling requirement of one sample for all industrial users.

Next, language concerning deadlines for industrial users was deleted from subsection (h) because Illinois does not regulate the USEPA.

Finally, a new subsection (i) was added requiring new sources, and existing sources that become industrial users subsequent to the promulgation of an applicable categorical standard, to submit a baseline report at least 90 days before beginning to discharge to a POTW. The POTW may require earlier submission where appropriate. Early submission of information is necessary to determine whether more stringent limits need to be

set on other contributors to avoid permit violations.

#### Section 310.604

This Section was derived from 40 CFR 403.12(d), amended at 53 Fed. Reg. 40613, October 17, 1988. The amendment does not change existing requirements, but just clarifies the contents of the 90 day compliance report. It requires the industrial user to submit in his compliance report the same detailed information as in the base line report. It also specifies additional information required by industrial users subject to equivalent mass or concentration limits.

#### Section 310.605

This Section was derived from 40 CFR 403.12(e), amended at 53 Fed. Reg. 40613, October 17, 1988. The amendment adds a new subsection (c). This new subsection states reporting requirements for industrial users subject to equivalent mass or concentration limits established by the Agency and for industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production.

#### Section 310.606

This Section was derived from 40 CFR 403.12(f), amended at 53 Fed. Reg. 40614, October 17, 1988. This amendment replaces the current requirement that the industrial user notify the POTW only for slug loadings with a broader requirement that industrial users, categorical and non-categorical, notify the POTW of any problems that could cause problems, including slug loadings. The Section head is revised to read "Notice of Potential Problems".

#### Section 310.610

This Section was derived from 40 CFR 403.12(g), amended at 53 Fed. Reg. 40614, October 17, 1988. Four new subsections have been added. To establish a minimal acceptable amount of monitoring for the periodic compliance report, clarifying language has been included as to what amount of sampling and analysis are necessary. The Agency will monitor frequency for indirect dischargers on a case-by-case basis, based on certain criteria. Another change expressly allows a POTW to monitor versus self-monitoring by industrial users.

#### Section 310.611

This new Section is derived from a new 40 CFR 403.12(h), added at 53 Fed. Reg. 40614, October 17, 1988. The old paragraph (h) has been redesignated 40 CFR 403.12(k). The Section has been headed "Requirements for Non-Categorical Users". The Section provides that the control authority shall require appropriate reporting from those industrial users with discharges that are

not subject to categorical pretreatment standards.

#### Section 310.612

This new Section is derived from a new 40 CFR 403.12(i), added at 53 Fed. Reg. 40614, October 17, 1988. The old paragraph (i) has been redesignated 40 CFR 403.12(l). This new Section is headed "Annual POTW Reports". The Section requires POTW's with approved pretreatment programs to provide the Agency with a report containing specified information within one year from the date its pretreatment program was approved.

#### Section 310.613

This new Section is derived from a new 40 CFR 403.12(j), added at 53 Fed. Reg. 40614, October 17, 1988. The old paragraph (j) has been redesignated 40 CFR 403.12(m). This new Section is headed "Notification of Changed Discharge". It requires all industrial users to promptly notify the POTW in advance of any substantive change in the volume or character of pollutants in their discharge.

#### Section 310.621

This Section was derived from 40 CFR 403.12(h), amended at 53 Fed. Reg. 40614, October 17, 1988. The old paragraph (h) has been redesignated 40 CFR 403.12(k).

#### Section 310.631

This Section was derived from 40 CFR 403.12(i). However, due to the amendment at 53 Fed. Reg. 40614, October 17, 1988, this Section is now derived from 40 CFR 403.12(l). The amendment to this Section adds language to the introductory sentence requiring the certification statement in the required reports. Subsection (a) has also been expanded with detailed language as to who qualifies as a responsible corporate officer. Subsection (c) has also been expanded with detailed language concerning duly authorized representatives.

#### Section 310.632

This Section was originally derived from 40 CFR 403.12(j). Due to the amendment at 53 Fed. Reg. 40614, October 17, 1988 this Section is now 40 CFR 403.12(m).

#### Section 310.633

This Section was derived from 40 CFR 403.12(k). Due to the amendment at 53 Fed. Reg. 40614, October 17, 1988, this Section is now 40 CFR 403.12(n). The Section was amended to make an additional reference to the new Sections 310.611 and 310.612.

#### Section 310.634

This Section was derived from 40 CFR 403.12(1). Due to the amendment at 53 Fed. Reg. 40614, October 17, 1988, this Section is now 40 CFR 403.12(o). The Section is amended to add a reference to the new 310.611.

SUBPART H: ADJUSTMENTS FOR POLLUTANTS IN INTAKE

Section 310.801

This Section was derived from 40 CFR 403.15, amended at 53 Fed. Reg. 40615, October 17, 1988. The amendment updates the year reference and adds a reference to the amendment modifying the Section.

SUBPART I: UPSETS

Section 310.903

This Section was derived from 40 CFR 403.16(c), amended at 53 Fed. Reg. 40615, October 17, 1988. The amendment deletes the word "specific" from subsection (a) to clarify that the regulation does not require investigation to an impossible degree of certainty in establishing an upset defense. Now the industrial user must only identify the cause of the upset.

SUBPART J: BYPASS

This new subpart was derived entirely from 40 CFR 403.17, added at 53 Fed. Reg. 40615, October 17, 1988. A bypass is the intentional diversion of waste streams from any portion of a discharger's treatment facility. To date there has been bypass provisions only in the NPDES regulations. Since the purposes served by the NPDES bypass provisions are equally important in the pretreatment context, similar provisions are now being added to these pretreatment regulations. The purpose of the bypass provisions is to ensure that industrial users properly operate and maintain their treatment facilities and thus fulfill the purpose and assumptions underlying technology-based standards. Like the NPDES provision, industrial users must operate their treatment systems at all times. This Subpart also excuses bypasses under the same circumstances as the NPDES bypass provision.

Section 310.910

This Section defines "Bypass" and "Severe Property Damage".

Section 310.911

This Section provides that an industrial user may allow a bypass if it is for essential maintenance to assure efficient operation so long as the bypass does not cause a violation of the pretreatment standards or requirements.

### Section 310.912

This Section states that if an industrial user knows in advance of the need for a bypass, an industrial user must submit prior notice to the control authority at least 10 days before the bypass. Also, oral notice must be given of an unanticipated bypass within 24 hours from the time the industrial user becomes aware of the bypass, followed by written notice within 5 days of the time the industrial user became aware. The information that is required in the written submission is detailed. Finally, the Section gives the control authority the authority to waive the written report on a case-by-case basis if the oral report has been received within the 24 hours.

### Section 310.913

This Section provides that bypass is prohibited, unless the industrial user can show all three elements of a defense. The three elements of the defense are 1) the bypass was unavoidable to prevent loss of life, personal injury or severe property damage; 2) there were no feasible alternatives; and 3) the industrial user submitted notices as required under Section 910.912. This Section also gives the control authority the ability to approve an anticipated bypass if the control authority determines that it will meet the three conditions and the adverse effects are considered.

The USEPA rule provides that the control authority may not file an enforcement action if the defense is present. The Board has proposed to omit this provision since it does not regulate the Agency's prosecutorial discretion.

### SUBPART K: MODIFICATION OF POTW PRETREATMENT PROGRAMS

This entire new Subpart was derived from 40 CFR 403.18, added at 53 Fed. Reg. 40615, October 17, 1988. This Subpart has been added to address the situation where changing conditions at the POTW may warrant changes in the operation of the program. Changes that may require program modification include the addition of new industrial users, new connections with outlying jurisdictions, the establishment of new water quality standards, new treatment techniques or sludge use or disposal methods, changing resource conditions etc. This Subpart is intended to track the program approval process, providing procedures and criteria for modification of approved programs.

### Section 310.920

This Section gives either the Agency or the POTW with an approved POTW pretreatment program the authority to initiate program modification at any time to reflect changing conditions of the POTW.

Section 310.921

This Section states the procedures to modify the program. The CFR citation and federal language concerning minor modification of permits has not been added in Section 310.910. For as discussed in the R86-44 Opinion, p. 48, minor modification procedures do not exist for NPDES permits under the Illinois regulations at 35 Ill. Adm. Code 309.

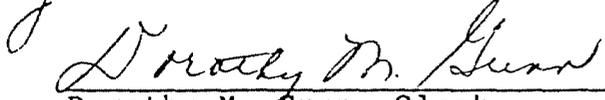
Section 310.922

This Section states what are substantial modifications for purposes of this Section. Paragraph (c) of the federal language is not proposed for adoption since it is a directive. Comment is solicited on the need for other substantial modifications to be added to the list.

This Proposed Opinion supports the Board's Proposed Order of this same day.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Proposed Opinion was adopted on the 11<sup>th</sup> day of May, 1989, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board