

ILLINOIS POLLUTION CONTROL BOARD

April 3, 1997

IN MATTER OF:) R97-7
) (Rulemaking Identical - in -
PRETREATMENT UPDATE USEPA) Substance Rules - Water)
REGULATION (January 1, 1996 through)
June 30, 1996))

Adopted Rule. Final Order.

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

The Board today adopts as final rules amendments to the pretreatment regulations pursuant to Section 13.3 of the Environmental Protection Act (Act) (415 ILCS 5/13.3 (1994)). These amendments were proposed for public comment in the Board's proposed opinion and order of January 9, 1997.

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. 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.

This rulemaking updates the pretreatment rules to cover USEPA rules adopted from January 1 through June 30, 1996. The following *Federal Registers* are included:

61 Fed. Reg. 15596	April 8, 1996
61 Fed. Reg. 15662	April 8, 1996
61 Fed. Reg. 19117	April 30, 1996
61 Fed. Reg. 24242	May 14, 1996
61 Fed. Reg. 33680	June 28, 1996

The pretreatment rules govern discharges by industrial users to publicly owned treatment works (POTWs). The rules are intended to prevent pollutants from 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, 309 and 310. Part 307 includes the categorical pretreatment standards, which are incorporated by reference from the USEPA rules. Part 309 sets forth the NPDES 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. Part 310 specifies how a POTW sets up a pretreatment program, and how industrial users get pretreatment permits or authorizations to discharge.

PUBLIC COMMENTS

The notice of proposed amendments for this rulemaking appeared in the Illinois Register on January 24, 1997 at 21 Ill. Reg. 1147.

No public comments were received by the Board during the comment period. The Board received recommended corrections to the proposed amendments from the Joint Committee on Administrative Rules. These corrections are mainly for clarification and consistency and have been incorporated in the amendments as proposed for adoption.

The complete text of the adopted amendments follows the discussion of the amendments.

DISCUSSION

On April 8, 1996, the USEPA amended the treatment standards for hazardous wastes that exhibit the characteristics of reactivity. The USEPA also began amending existing treatment standards for wastewaters which are hazardous because they display the characteristics of ignitability, corrosivity, reactivity or toxicity. Prior to the amendments the treatment standards for these waters required removal of the characteristic property. The new standards require treatment not only to remove the characteristic property, but also requires treatment of any underlying hazardous constituents present in the waste.

Also on April 8, 1996, the USEPA withdrew portions of the rule promulgated in the same register. The revised treatment standards were promulgated to implement the mandate from the Circuit Court of Appeals for the District of Columbia Circuit in Chemical Waste Management (CWM) v. EPA, 976 F. 2d 2 (D.C. Cir. 1992), cert. denied 113 S. Ct. 1961 (1993). On March 26, 1996, President Clinton signed into law the Land Disposal Program Flexibility Act of 1996 which in part provides that the wastes in question are no longer prohibited from land disposal so long as it is not a hazardous waste at the time it is land disposed. The statute in effect overrules the related portions of CWM v. EPA. The USEPA withdrew those portions of the adopted rule that are superseded by the new legislation.

On April 30, 1996, the USEPA corrected the effective date that appeared in the April 8, 1996 *Federal Register* on page 15660 for the rules on Land Disposal Restrictions Phase III - Decharacterized Wastewaters, Carbamate Wastes and Spent Potliners. The effective date was corrected from April 5 to April 8, 1996.

In the June 28, 1996 *Federal Register*, the USEPA published technical corrections to the regulations published on April 8, 1996 as well as the withdrawal notice of the same date. The USEPA makes corrections and clarifications to 40 CFR 148 and 40 CFR 168.

The Board will not be taking any action in this wastewater pretreatment docket to adopt the amendments to the hazardous waste and underground injection land disposal regulations that appeared in the *Federal Registers* listed above which accompanied the wastewater pretreatment amendments. The hazardous waste and underground injection land disposal amendments will be addressed in the near future in an opinion and order in the consolidated RCRA/UIC update docket R96-10, R97-3 and R97-5. Those portions of the amendments are to 40 CFR Parts 148 and 268 and affect the Board's regulations related to RCRA and UIC.

Along with adopting new land disposal restrictions in the above actions, the USEPA amended Section 403.5 to allow POTWs with an approved pretreatment program to establish limits to address the land disposal restrictions. The Board accordingly updates the incorporation of 40 CFR 403.5 in Section 310.107 of the Board's pretreatment regulations. Since the Board incorporates by reference 40 CFR 403.5 which, as amended, references the new land disposal restrictions in 40 CFR 268.40, the Board can update this incorporation prior to actually adopting the land disposal restrictions as part of Illinois' regulations.

The USEPA published a correction to the CFR on May 14, 1996 at 61 Fed. Reg. 24242, to correct a duplicate entry. The correction removed the first Section 421.35 in Title 40 of the CFR as amended on July 1, 1995 appearing on page 468. Section 421.35 as amended in 1987 is incorporated in Section 307.3103(c) of the Board's regulations. Because the correction by the USEPA involves a printing error and does not involve any substantive changes to the incorporated section, it is unnecessary to amend the Board's regulations. However, the Board notes the correction as made in the 1995 CFR for clarification purposes.

HISTORICAL OUTLINE OF BOARD PRETREATMENT REGULATION

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

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

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| 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, 1988 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, 1988 through December 31, 1988). |

- R89-12 110 PCB 119, April 12, 1990; 14 Ill. Reg. 7608, effective May 8, 1990 (USEPA amendments January 1, 1989 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 1990 through June 28, 1990).
- R91-5 129 PCB 395, January 23, 1992; 16 Ill. Reg. 7377 (Part 307); 7337 (Part 309); 7346 (Part 310); effective April 27, 1992. (USEPA amendments June 29, 1990 through December 31, 1990).
- R91-17 Dismissed, December 6, 1991 (No USEPA amendments January 1, 1991 through June 30, 1991).
- R92-5 Dismissed, April 9, 1992 (No USEPA amendments July 1, 1991 through December 31, 1991).
- R92-14 Dismissed, August 13, 1992 (No USEPA amendments January 1, 1992 through June 30, 1992).
- R93-2 September 9, 1993, 17 Ill. Reg. 19483 effective October 29, 1993 (USEPA amendments July 1, 1992 through December 31, 1992).
- R93-20 Dismissed April 9, 1992 (No USEPA amendments January 1, 1993 through June 30, 1993).
- R94-10 May 18, 1995, 19 Ill. Reg. 9142 effective June 23, 1995 (USEPA amendments July 1, 1993 through December 31, 1993).
- R94-28 Dismissed October 6, 1994 (No USEPA amendments January 1, 1994 through June 30, 1994).
- R95-8 Dismissed February 16, 1994 (No USEPA amendments July 1, 1994 through December 31, 1994).
- R95-22 March 21, 1996, 20 Ill. Reg. 5526, effective April 1, 1996 (USEPA amendments January 1, 1995 through June 30, 1995).
- R96-12 July 18, 1996, 20 Ill. Reg. 10671, effective July 24, 1996 (USEPA amendments July 1, 1995 through December 31, 1995).
- R97-7 This docket.

ORDER

The Board hereby proposes the following amendments to the Illinois wastewater treatment regulations at Section 310.107:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE C: WATER POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

PART 310
PRETREATMENT PROGRAMS

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, 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 (1994)
 - 40 CFR 25 (1994)
 - 40 CFR 122, Appendix D, Tables II and III (1994)
 - 40 CFR 128.140(b) (1977)
 - 40 CFR 136 (~~1996~~1995), ~~as amended at 60 Fed. Reg. 39586, August 2, 1995, 60 Fed. Reg. 44670, August 28, 1995 and 60 Fed. Reg. 3529, October 16, 1995~~
 - 40 CFR 403 (~~1996~~1995)
 - 40 CFR 403, Appendix D (1994)

- c) The following federal statutes are incorporated by reference:

- 1) Section 1001 of the Criminal Code (18 U.S.C. 1001) as of July 1, 1988
- 2) Clean Water Act (33 U.S.C. 1251 et seq) as of July 1, 1988
- 3) Subtitles C and D of the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.) as of July 1, 1988

d) This Part incorporates no future editions or amendments.

(Source: Amended at 21 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

Board Member K.M. Hennessey abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the ____ day of _____, 1997, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board