

FEB 15 2002

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
WASTE WATER PRETREATMENT) R02-9
UPDATE, USEPA AMENDMENTS) (Identical-In-Substance
(October 3, 2001)) Rulemaking)

1. Without commenting on matters that pertain strictly to State law, we support comments provided by the Illinois Environmental Protection Agency (IEPA) regarding this proposal, as they pertain to the Project eXcellence and Leadership (Project XL) Agreement with the Metropolitan Water Reclamation District of Greater Chicago, and the Federal rule promulgated on October 3, 2001, to implement that and other XL projects. Specifically, we believe that the Illinois Pollution Control Board's (the Board) proposed Ill. Admin. Code Section 310.930(b) is not identical in substance to the Federal Project XL rule, and would add procedural requirements not contemplated under the Federal XL process.

2. On August 30, 2000, the U.S. Environmental Protection Agency (U.S. EPA), IEPA, and the Metropolitan Water Reclamation District of Greater Chicago (the District) entered into a Final Project Agreement under U.S. EPA's Project XL. The parties solicited involvement from a wide range of stakeholders, and a number of industry, environmental and other nongovernmental organizations actively participated in the stakeholder process. The Agreement represented a joint statement of the plans and commitments of the parties to carry out a pilot project, and would allow the District to implement its pretreatment requirements in an innovative manner. It is not a contract or regulatory action, and is not binding or enforceable against any party.

3. On October 3, 2001, U.S. EPA promulgated a final rule for Pretreatment Program Reinvention Pilot Projects under Project XL at 40 CFR 403.20 (66 FR 50334). This rule provides, at the Federal level, the regulatory flexibility that will enable the five Publicly Owned Treatment Works (POTW) with signed Project XL Agreements (including the District), to implement their projects. In addition, the

regulation will enable ten currently undefined projects to participate in and successfully complete the project XL process. The rule recognized, however, that the affected states may first need to revise their own regulations or statutes to authorize the pilot programs for pretreatment XL project sponsors before the Federal rule could be implemented in their jurisdictions.

4. On November 30, 2001, in response to IEPA and the District's request for an expedited rulemaking, the Board proposed amendments to Ill. Admin. Code Section 310 to incorporate the Federal Project XL rule. Under the proposed Section 310.930, the Board provided that the IEPA may modify the District's permits in accordance with the XL Agreement finalized on August 30, 2000. However, any subsequent Project XL agreements would need to be presented to the Board in a rulemaking, adjusted standard or variance proceeding as established by the Illinois Environmental Protection Act.

5. Historically, where there have been revisions to the Federal pretreatment rules, the Board has adopted those rules in an "identical in substance" manner. U.S. EPA believed that to implement the District's XL Project, the Board would use its identical in substance rulemaking process, and would amend the state regulations by adopting language that was essentially the same as the Federal rule.

6. In actuality, however, the process identified in the Board's proposal differs from the process established under the Federal rule, and does not appear to be identical in substance. Under the Federal provision, 40 CFR 403.20, the Approval Authority may allow any POTW that has a final Project XL Agreement to implement a Pretreatment Program that includes legal authorities and requirements that are different than the administrative requirements otherwise applicable under that part. The POTW must submit the agreed upon alternative requirements as a substantial program modification to its Approval Authority, which in this case is U.S. EPA Region 5, in accordance with 40 CFR 403.18. The approved modified program would then be incorporated by the National Pollutant Discharge Elimination System (NPDES) permitting authority as an enforceable part of the POTW's NPDES permit. IEPA is the agency with whom U.S. EPA interacts regarding implementation of the Clean Water Act and other Federal environmental programs.

7. An identical in substance rule at the State level would have authorized IEPA to allow any POTW that has a final XL Agreement (one which has been agreed to by U.S. EPA, IEPA, and any other parties with input from interested stakeholders) to implement a Pretreatment Program that includes legal authorities and requirements that are different than the administrative requirements otherwise applicable under the state's pretreatment regulations. An identical in substance rule would not have required the POTW to go through a site-specific rulemaking process. Under the Board's proposal, however, each additional XL project would have to go through a site-specific rulemaking.


8. In addition, the Board is proposing procedural requirements under Section 310.930(b) beyond those anticipated under the Federal XL process. The Federal XL rule provides for a POTW with an XL Agreement to obtain a Pretreatment Program modification from its Approval Authority, (U.S. EPA Region 5). Under the Federal Pretreatment Program, there is no formal mechanism for an undelegated state such as Illinois to review and approve proposed POTW Pretreatment Program changes in a regulatory proceeding. Under 40 CFR 403.20, such POTWs would submit a proposed substantial Pretreatment Program modification to their Approval Authority, and the Approval Authority would review and approve the modification, after completing the necessary public notice requirements. The State would not be substantively involved in this process. Yet, in the scenario created under the Board's proposed rule, the Board would have an opportunity to review and potentially object to a proposed pretreatment program modification. Thus, a situation could arise where IEPA endorses an XL project, and the Board subsequently disapproves it. Accordingly, the status of that project would be unclear, at best.

9. Based on the above, we share IEPA's concern that the process laid out in the Board's proposal, which was not anticipated by the parties, would place additional administrative burdens on the District if it became necessary to modify its Agreement, and/or on any other POTWs that wished to pursue a Project XL Agreement in Illinois. Project XL is intended to test innovative ideas that demonstrate environmental excellence and leadership by those who must comply with U.S. EPA

regulations and policies. Moreover, the intent of promoting XL projects regarding POTW Pretreatment Programs was to streamline and reduce transactional costs to POTWs, and potentially to U.S. EPA and state agencies. In keeping with this intent, we would encourage the Board to support the current process whereby all interested parties and stakeholders are given full opportunity to participate during the development of individual Project XL Agreements.

10. For the reasons set forth above, we believe that the Board's proposed Ill. Admin. Code Section 310.930(b) is not identical in substance to the Federal Project XL rule, and would add procedural requirements not contemplated under the Federal XL process.

Respectfully submitted,



David A. Ullrich
Deputy Regional Administrator

Dated: *February 13, 2002*
U.S. EPA Region 5
77 W. Jackson Blvd
Chicago, IL 60604

STATE OF ILLINOIS)
)
COUNTY OF COOK)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Comments upon the persons to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Michael McCambridge
Hearing Officer
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Ms. Connie L. Tonsor
Associate Counsel
Special Assistant Attorney
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Michael G. Rosenberg, Attorney
Law Department
Metropolitan Water Reclamation District
of Greater Chicago
100 East Erie Street
Chicago, Illinois 60611

and mailing it from Chicago, Illinois on February 13, 2002 with sufficient postage affixed.

Te Dea Robinson

SUBSCRIBED AND SWORN TO BEFORE ME

this 14 day of Feb, 2002.

Joseph H. Kruth

NOTARY PUBLIC

