

ILLINOIS POLLUTION CONTROL BOARD
September 22, 1988

IN THE MATTER OF:)
)
PRETREATMENT UPDATE) R88-18
(1/1/88 through 6/30/88))

PROPOSAL FOR PUBLIC COMMENT

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

The Board is proposing to amend the pretreatment regulations pursuant to Section 13.3 of the Environmental Protection Act (Act). The text of the proposal is contained in a separate 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, which was 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 enacted in the recent Session includes a definition of "identical in substance." This legislation largely codifies the Board's past interpretation of its mandate under Section 13.3 of the Act.

This rulemaking updates the pretreatment rules to cover USEPA rules adopted from January 1 through June 30, 1988. The following Federal Registers are included:

53 Fed. Reg. 1704 January 21, 1988
53 Fed. Reg. 9176 March 21, 1988

The Agency filed a public comment in R88-1 which included a list of typographical errors in the rules adopted in R86-44. The Board has made this comment a public comment in this Docket, in order to address errors made in an identical in substance rulemaking in the same procedural context.

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.

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 amended in the following update rulemaking:

R88-11 June 14, 1988; 12 Ill. Reg. 13094, effective July 29, 1988.

The specific amendments derived from the USEPA actions affect only the categorical pretreatment standards reflected in Part 307; there are no amendments to the program requirements of Part 310. The following is a summary of the amendments:

January 21 Modifications for the Primary Tungsten Subcategory.

March 21 Modifications for Leather Tanning Subcategory.

Both of these represent minor modifications to the USEPA rules resulting from litigation. The changes are mainly updated incorporations by reference.

Most of the changes in the proposal are corrections of minor typographical errors which occurred in adoption of the rules in R86-44. Many of these were pointed out by the Agency in its public comment in R88-1, as discussed above.

DETAILED DISCUSSION

Section 307.1508

This Section corrects the spelling of "sherbet", and corrects the incorporation by reference of 40 CFR 405.86. "Sherbet" is misspelled in the USEPA rule, but the Board has proposed to correct it here.

The Board has not proposed to correct the spelling of "buttermilk" or "butter milk". It is unlikely that this would mislead anyone. Attempting to correct minor typographical errors carries a risk of making a major error. The Board has noted many of the Agency's suggestions, and will propose to correct them as these Sections come up for review.

In R86-44 the Board generally referenced the 1986 edition of the Code of Federal Regulations. The Board has proposed to update the references in all Sections up for review to the 1987 edition.

Section 307.1704

"Onto" has been corrected to read "into".

Section 307.2101

"Contracted" has been corrected to read "contacted".

Section 307.2903

"Of" has been corrected to read "or".

In Section 307.2904, the Board cannot find the error. In Section 307.3100, there is no rule which prohibits omission of subsection labels. Section 307.3100(b) is reserved for a reserved USEPA Section. There is a rule against placing a "reserved" in the subsection.

Section 307.3110

The pretreatment standards for primary tungsten manufacture were amended at 53 Fed. Reg. 1711, January 21, 1988.

Section 307.3129

The spelling of "tungsten" has been corrected, and an extra "or" dropped. Several minor errors noted by the Agency in ensuing Sections have been noted, but no changes proposed. In Section 307.4301, the applicability statement is absent, reflecting the unique structure of 40 CFR 433, which was discussed in R86-44.

Section 307.3500 et seq.

Several introductory rules and pretreatment standards relating to Leather Tanning and Finishing were amended at 53 Fed. Reg. 9181, March 21, 1988.

Section 307.4004

The Board has proposed to correct a reference to a USEPA rule in this Section.

Section 307.8100

This has been corrected by insertion of "alloys". The Board has considered the Agency's suggestions as to rewording the USEPA language and grammar, but declines to do so, since the USEPA language is understandable.

Section 310.107

The Board has proposed to update the references to the Code of Federal Regulations to reflect the 1987 edition. The Board solicits comment as to whether any of the remaining references need updating.

Section 310.110

In R86-44 the Board adopted definitions of "treatment works", "unit of local government" and "POTW". The federal text had to be changed, in part to accommodate constitutional and statutory definitions of "unit of local government" and "municipality", and in part to avoid relying on a reference to a federal statutory definition. In crafting these definitions, the Board inadvertently omitted the State of Illinois as an entity which becomes a POTW when it operates a treatment works under 40 CFR 403.3(o). The Board has

proposed to correct this error.

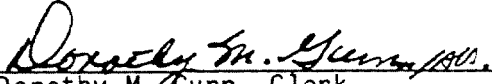
The Board addressed the similar definition of Section 301.365 in R88-1. As was discussed in Scott Air Force Base v. IPCB, PCB 88-69, August 10, 1988, federal facilities within Illinois are not "POTW's" within the meaning of the NPDES program. This appears also to be USEPA's intent with respect to the pretreatment program. The main effect of this is that federal facilities are not required to develop pretreatment programs.

In Section 310.311(a) the Board cannot find the problems noted by the Agency. The forms of reference between portions of the Administrative Code are mandated 1 Ill. Adm. Code 100.370. The remaining typographical errors in Part 310 have been noted, and will be corrected as the Sections come up for review.

The text of the proposal is contained in a separate Proposed Order. The Board will accept public comment for a period of 45 days after the date of publication in the Illinois Register.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 22nd day of September, 1988, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board