**Section 310.510 Pretreatment Program Requirements**

A POTW pretreatment program must be based on the following legal authority and include the following procedures, and these authorities and procedures must at all times be fully and effectively exercised and implemented:

a) Legal Authority. The POTW must operate pursuant to legal authority enforceable in federal, State, or local courts, which authorizes or enables the POTW to apply and enforce the requirements of this Part and 35 Ill. Adm. Code 307. Such authority may be contained in a statute, ordinance, or series of joint powers agreements that the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority must enable the POTW to:

1) Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users if those contributions do not meet applicable pretreatment standards and requirements or would cause the POTW to violate its NPDES permit;

2) Require compliance with applicable pretreatment standards and requirements by industrial users;

3) Control, through ordinance, permit, order, or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements, and for each significant industrial user, as defined at Section 310.110, this control must be achieved through individual permits or equivalent individual control mechanisms issued to each such user except as follows:

A) At the discretion of the POTW, this control may include using general control mechanisms if the conditions of subsection (g) are met.

BOARD NOTE: Subsection (g) is derived from 40 CFR 403.8(f)(1)(iii)(A)(1)(i) through (f)(1)(iii)(A)(2), as added at 70 Fed. Reg. 60134 (Oct. 14, 2005), which would normally appear at this subsection (a)(3)(A), but which the Board moved to subsection (g) to comply with Illinois Administrative Code codification requirements.

B) All individual control mechanisms and general control mechanisms must be enforceable and contain, at a minimum, the following conditions:

i) A statement of duration (in no case more than five years);

ii) A statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

iii) Effluent limits, including best management practices, based on applicable general pretreatment standards in this Part and 35 Ill. Adm. Code 307, categorical pretreatment standards, local limits, and local law;

iv) Self-monitoring, sampling, reporting, notification, and recordkeeping requirements, including an identification of the pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the discharge in accordance with Section 310.605(b), or a specific waived pollutant in the case of an individual control mechanism), sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards of this Part and 35 Ill. Adm. Code 307, categorical pretreatment standards, local limits, and local law;

v) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule; however, such schedules may not extend the compliance date beyond applicable federal deadlines; and

vi) Requirements to control slug discharges, if such are determined by the POTW to be necessary;

4) Require the following:

A) The development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements; and

B) The submission of all notices and self-monitoring reports from industrial users necessary to assess and assure compliance by industrial users with pretreatment standards and requirements, including the reports required in Subpart F;

5) Carry out all inspection, surveillance, and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW must be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under Section 310.634 to assure compliance with pretreatment standards. Such authority must be at least as extensive as the authority provided under section 308 of the federal CWA (33 U.S.C. 1318), incorporated by reference in Section 310.107(c);

6) Obtain remedies for noncompliance by any industrial user with any pretreatment standard or requirement.

A) All POTWs must be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards or requirements. All POTWs must also have the authority to seek or assess civil or criminal penalties in at least the amount of $1,000 a day for each violation by industrial users of pretreatment standards and requirements.

B) Pretreatment requirements that will be enforced through the remedies set forth in subsection (a)(6)(A) will include but not be limited to: the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; any requirements set forth in control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW, this Part or 35 Ill. Adm. Code 307. The POTW must have authority and procedures (after notice to the industrial user) immediately and effectively to halt or prevent any discharge of pollutants to the POTW that reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW must also have authority and procedures (which must include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW that presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The Agency must have authority to seek judicial relief when the POTW has sought a monetary penalty that the Agency finds to be insufficient; and

7) Comply with the confidentiality requirements set forth in Section 310.105.

b) Procedures. The POTW must develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures must enable the POTW to do the following:

1) Identify and locate all possible industrial users that might be subject to the POTW pretreatment program. Any compilation, index, or inventory of industrial users made under this subsection (b)(1) must be made available to the Agency upon request;

2) Identify the character and volume of pollutants contributed to the POTW by the industrial users identified under subsection (b)(1). This information must be made available to the Agency upon request;

3) Notify industrial users identified under subsection (b)(1) of applicable pretreatment standards and any applicable requirements under sections 204(b) and 405 of the federal CWA (33 U.S.C. 1284(b) and 1345) and Subtitles C and D of the federal Resource Conservation and Recovery Act (42 U.S.C. 6921-6939e and 6941-6949a), each incorporated by reference in Section 310.107. Within 30 days after approval, pursuant to subsection (f), of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status;

4) Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements in Subpart D;

5) Randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities to identify, independent of information supplies by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year, except as otherwise specified in subsections (b)(5)(A) through (b)(5)(C):

A) If the POTW has authorized the industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard in accordance with Section 310.605(c), the POTW must sample for the waived pollutants at least once during the term of the categorical industrial user's control mechanism. If the POTW subsequently determines that a waived pollutant is present or is expected to be present in the industrial user's wastewater based on changes that occur in the industrial user's operations, the POTW must immediately begin at least annual effluent monitoring of the industrial user's discharge and inspection.

B) If the POTW has determined that an industrial user meets the criteria for classification as a non-significant categorical industrial user, the POTW must evaluate at least once per year whether an industrial user continues to meet the definition of significant industrial user in Section 310.110.

C) In the case of industrial users subject to reduced reporting requirements under Section 310.605(c), the POTW must randomly sample and analyze the effluent from the industrial user and conduct inspections at least once every two years. If the industrial user no longer meets the conditions for reduced reporting in Section 310.605(c), the POTW must immediately begin sampling and inspecting the industrial user at least once a year.

6) Evaluate whether each such significant industrial user needs a plan or other action to control slug discharges. For industrial users identified as significant prior to November 14, 2005, this evaluation must have been conducted at least once by October 14, 2006; an additional significant industrial user must be evaluated within one year after being designated a significant industrial user. For this subsection (b)(6), a slug discharge is any discharge of a non-routine, episodic nature, including an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, local limits or permit conditions. The results of such activities must be available to the Approval Authority upon request. Significant industrial users are required to notify the POTW immediately of any changes at its facility affecting potential for a slug discharge. If the POTW decides that a slug control plan is needed, the plan must contain, at a minimum, the following elements:

A) Description of discharge practices, including non-routine batch discharges;

B) Description of stored chemicals;

C) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under Section 310.202 with procedures for follow-up written notification within five days;

D) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), or measures and equipment for emergency response;

7) Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required under Subpart D or as indicated by analysis, inspection, and surveillance activities described in subsection (b)(5). Sample taking and analysis, and the collection of other information, must be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and

8) Comply with the public participation requirements of 40 CFR 25, incorporated by reference in Section 310.107, in the enforcement of pretreatment standards. These procedures must include provision for providing, at least annually, public notification, in a newspaper of general circulation in the jurisdictions served by the POTW of industrial users that, at any time during the previous 12 months, were in significant noncompliance with applicable pretreatment requirements. For this provision, a significant industrial user (or any industrial user that violates subsection (b)(8)(C), (b)(8)(D), or (b)(8)(H) is in significant noncompliance if its violation meets one or more of the following criteria:

A) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits as defined in Section 310.110;

B) "Technical review criteria" (TRC) violations, which mean those violations in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement, including instantaneous limits as defined in Section 310.110, multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease and 1.2 for all other pollutants, except pH);

C) Any other violation of a pretreatment standard or requirement as defined in Section 310.110 (daily maximum, long-term average, instantaneous limit, or narrative standard) that the POTW determines has caused, alone or in combination with other discharges, interference, or pass through (including endangering the health of POTW personnel or the general public);

D) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or the environment or has resulted in the POTW's exercise of its emergency authority under subsection (a)(6)(B) to halt or prevent such a discharge;

E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

F) Failure to provide, within 45 days after the due date, required reports, such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

G) Failure to accurately report noncompliance; or

H) Any other violation or group of violations, which may include a violation of best management practices, that the POTW determines will adversely affect the operation or implementation of the local pretreatment program.

c) The POTW must have sufficient resources and qualified personnel to carry the authorities and procedures described in subsections (a) and (b).

d) Local Limits. The POTW must develop local limits as required in Section 310.210 or demonstrate that they are not necessary.

e) The POTW must develop and implement an enforcement response plan. This plan must contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan must, at a minimum, do the following:

1) Describe how the POTW will investigate instances of noncompliance;

2) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

3) Identify (by title) the officials responsible for each type of response; and

4) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in subsections (a) and (b).

f) The POTW must prepare and maintain a list of its industrial users meeting the criteria in the first paragraph of the definition of "significant industrial user" at Section 310.110. The list must identify the criteria in the first paragraph of the definition of "significant industrial user" at Section 310.110 applicable to each industrial user and, if applicable, must also indicate whether the POTW has determined pursuant to the second paragraph of that definition that the industrial user should not be considered a significant industrial user. The initial list must be submitted to the Approval Authority pursuant to Sections 310.521 through 310.533 as a non-substantial program modification pursuant to Section 310.923. Any modification to the list must be submitted to the Approval Authority pursuant to Section 310.612(a).

g) Alternative Use of General Control Mechanisms

1) A POTW may use a single general control mechanism that applies to several facilities in place of several individual control mechanisms applicable to individual facilities. To use a general control mechanism, the following must be true of all of the facilities to be covered by the general control mechanism:

A) The covered facilities must all involve the same or substantially similar types of operations;

B) The covered facilities must all discharge the same types of wastes;

C) The covered facilities must all require the same effluent limitations;

D) The covered facilities must all require the same or similar monitoring; and

E) In the opinion of the POTW, the covered facilities are more appropriately controlled under a general control mechanism than under individual control mechanisms.

2) To be covered by the general control mechanism, the significant industrial user must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general control mechanism, any requests in accordance with Section 310.605(b) for a monitoring waiver for a pollutant neither present nor expected to be present in the discharge, and any other information the POTW deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general control mechanism until after the POTW has provided written notice to the significant industrial user that such a waiver request has been granted in accordance with Section 310.605(b). The POTW must retain a copy of the general control mechanism, documentation to support the POTW's determination that a specific significant industrial user meets the criteria in subsections (a)(3)(i)(A) through (a)(3)(i)(E), and a copy of the significant industrial user's written request for coverage for three years after the expiration of the general control mechanism. A POTW may not control a significant industrial user through a general control mechanism where the facility is subject to production-based categorical pretreatment standards or categorical pretreatment standards expressed as mass of pollutant discharged per day or for a significant industrial user whose limits are based on the combined wastestream formula or net/gross calculations (Sections 310.233 and 310.801).

BOARD NOTE: Subsection (g) is derived from 40 CFR 403.8(f)(1)(iii)(A)(1)(i) through (f)(1)(iii)(A)(2), as added at 70 Fed. Reg. 60134 (Oct. 14, 2005). The Board moved the text of these subsections, which would normally appear at subsection (a)(3)(A), to this subsection (g) to comply with Illinois Administrative Code codification requirements.

BOARD NOTE: Derived from 40 CFR 403.8(f) (2005), as amended at 70 Fed. Reg. 60134 (Oct. 14, 2005).

(Source: Amended at 47 Ill. Reg. 5083, effective March 23, 2023)