

ILLINOIS POLLUTION CONTROL BOARD
November 10, 2020

IN THE MATTER OF:)
WASTEWATER PRETREATMENT) R21-15
STANDARDS UPDATE, USEPA) (Identical-in-Substance Rulemaking -
REGULATIONS (July 1, 2020 through) Water)
December 31, 2020))

HEARING OFFICER ORDER

This hearing officer seeks public comment from interested persons on the possible need for prompt Board identical-in-substance rulemaking based on a recent United States Environmental Protection Agency (USEPA) action.

USEPA revised the implementation deadlines for the National Pollutant Discharge Elimination System (NPDES) eReporting rule on November 2, 2020. USEPA changed the deadline for Phase 2 implementation from December 21, 2020 to December 21, 2025. USEPA's revised deadline is effective January 4, 2021.

For details, see the *Federal Register* notice: 85 Fed. Reg. 69189 (Nov. 2, 2020), available at www.govinfo.gov/content/pkg/FR-2020-11-02/pdf/2020-21446.pdf

The original December 21, 2020 deadline is codified in the Illinois wastewater pretreatment rules, at 35 Ill. Adm. Code 310.106(b)(8)(A).

The following is true about Board action to adopt USEPA's revised deadline:

1. Until the Board incorporates USEPA's revised deadline into the Illinois rules, the deadline in the Illinois rules will remain five years earlier than required by USEPA.
2. By the ordinary course, the Board is not required to incorporate USEPA's revisions into the Illinois rules until November 2, 2021.
3. Expediting consideration, but still following the ordinary course, the Board could propose USEPA's revisions as early as March 2021 and adopt them with an effective date as soon as mid-May 2021.
4. Deviating from the ordinary course by immediately proposing USEPA's revisions under a separate identical-in-substance rulemaking, the Board could propose USEPA's revisions in December 2020 and adopt them with an effective date as soon as early March 2021.
5. The Board has one potential option for adopting USEPA's delayed deadline with an effective date on or before December 21, 2020. That is the least-desirable option: emergency rulemaking.

Note: The Illinois Administrative Procedure Act defines an “emergency” as “the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare.” 5 ILCS 100/5-45(a) (2018). The Board has not determined that the revised deadline creates an emergency.

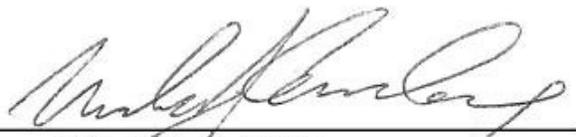
Seeking input to guide Board action on USEPA’s revised deadline, I submit the following inquiries for public comment:

1. Should the Board expedite consideration of USEPA’s revised deadline and adopt them with an effective date as soon as early as mid-May 2021?
2. Should the Board expedite consideration of USEPA’s revised deadline by considering them in a separate docket, immediately proposing them, and adopting them with an effective date as soon as early as March 2021?
3. Is it necessary for the Board to immediately adopt USEPA’s revised deadline by emergency rulemaking for an effective date on or before December 21, 2020?

Interested persons must properly and timely file any responses with the Board Clerk’s Office as follows:

1. Properly filing a response would require compliance with 35 Ill. Adm. Code 101.302 and marking the response with docket R21-15.
2. The Clerk’s Office must receive responses no later than November 24, 2020 (two weeks after the date of this hearing officer order). (This will allow Board action as early as the December 3, 2020 regularly scheduled Board meeting.)
3. Interested persons should include a statement of reasons justifying the need for the action recommended—especially for emergency rulemaking.

IT IS SO ORDERED.



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