

ILLINOIS POLLUTION CONTROL BOARD

June 17, 2021

IN THE MATTER OF:)
RCRA SUBTITLE C UPDATE, USEPA) R21-13
AMENDMENTS (July 1, 2020 through) (Identical-in-Substance Rulemaking - Land)
December 31, 2020))

Reasons for Delay. Extension of Time.

ORDER OF THE BOARD (by A. Palivos):

In this reserved docket, the Board will amend the Illinois hazardous waste rules that are identical-in-substance (IIS) to amendments adopted by the United States Environmental Protection Agency (USEPA) during the second half of 2020. The Board today finds that additional time is needed to complete the amendments and extends the due date for final Board action until November 1, 2021.

Section 22.4(a) of the Environmental Protection Act (Act) (415 ILCS 5/22.4(a) (2018)) requires the Board to adopt hazardous waste rules that are IIS to USEPA's RCRA Subtitle C (42 U.S.C. §§ 6921 *et seq.* (2017)) rules. Section 22.4(a) requires the Board to use the IIS rulemaking procedure of Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2018)). Sections 22.4(a) also provide that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) (5 ILCS 100/5-35 and 5-40 (2018)) do not apply to the Board's adoption of IIS regulations.

Section 7.2(b) of the Act requires the Board to complete action on amendments within one year of when USEPA adopted its rules. Section 7.2(b) further provides that the Board can extend the time to complete amendments upon a finding that the one-year period is insufficient to complete the rulemaking and specifically state the reasons for the extension. The Board must publish a notice of extension in the *Illinois Register*. 415 ILCS 5/22.4(b)

SUMMARY OF USEPA ACTIONS THAT MAY REQUIRE BOARD ACTION

The Board reserved docket R21-13 to accommodate USEPA actions relating to hazardous waste during the second half of 2020. During this time, USEPA took two hazardous waste-related actions amending rules that have counterparts in the Illinois regulations:

July 7, 2020 (85 Fed. Reg. 40594):

USEPA adopted Modernizing Ignitable Liquids Determinations, revising the criteria for the hazardous waste characteristic of ignitability.

August 21, 2020 (85 Fed. Reg. 51650):

USEPA revised its rules to streamline procedures for permit appeals.

The statutory due date for completing Board action on USEPA's amendments is July 7, 2021. Meeting this deadline would have required the Board to propose amendments no later than April 1, 2021, followed by publication of Notices of Proposed Amendments in the *Illinois Register* before April 23, 2021. This did not occur.

EXTENSION OF DUE DATE AND REASONS FOR DELAY

The Board finds that additional time is needed to complete the amendments based on these USEPA actions. The Board extends the due date for final action until November 1, 2021.

The Board is reviewing the entire text of the Illinois hazardous waste regulations to make needed corrections and harmonize that text with current Board stylistic preferences and stylistic preferences that the Joint Committee on Administrative Rules (JCAR) consistently submits based on our proposed rules. The Board staff member who has worked on hazardous waste updates for nearly 30 years plans to retire within the next several months. The Board wishes to take advantage of his experience by completing review of the rules before he retires.

The large volume of text and effort needed for the review will not allow completing this review in a single rulemaking. The Board will include corrections to the first portion of the hazardous waste rules in docket R21-13. This includes the texts of Parts 702 through 705 and 720 and a portion of Part 721 in docket R21-13. The Board plans to complete review of the hazardous waste rules in the next one or two hazardous waste updates.

Even the time involved in reviewing this first portion of the hazardous waste rule has exceeded expectations. It has not allowed timely progress on the R21-13 amendments.

The Board plans to complete the amendments in docket R21-13 on the following schedule:

Proposal adopted date:	July 22, 2021
Publication submission deadline:	August 2, 2021
<i>Illinois Register</i> publication date:	August 13, 2021
End of 45-day public comment period:	September 27, 2021
Adoption date:	October 7, 2021
Possible filing and effective date:	October 18, 2021
Possible <i>Illinois Register</i> publication date:	October 29, 2021

This schedule includes about two extra weeks to accommodate possible further delay.

ORDER

The Board directs the Clerk to submit a notice of this order for publication in the *Illinois Register*.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 17, 2021, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board