

ILLINOIS POLLUTION CONTROL BOARD

February 17, 2022

IN THE MATTER OF:)
RCRA SUBTITLE C UPDATE, USEPA) R21-13
AMENDMENTS (July 1, 2020 through) (Identical-in-Substance Rulemaking - Land)
December 31, 2020))
RCRA SUBTITLE C UPDATE, USEPA) R22-13
AMENDMENTS (July 1, 2021 through) (Identical-in-Substance Rulemaking - Land)
December 31, 2021))
CORRECTIONS TO RCRA SUBTITLE C) R22-19
AN UIC PERMIT RULES (35 Ill. Adm. Code) (Identical-in-Substance Rulemaking - Land)
702 through 705))

Reasons for Delay. Extension of Time.

ORDER OF THE BOARD (by A. Palivos):

In these reserved dockets, 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 halves of 2020 and 2021. The Board will further extensively correct and update the hazardous waste (RCRA Subtitle C) and underground injection control (UIC) permit rules. The Board today consolidates the three dockets to expedite consideration and finds that additional time is needed to complete the amendments and extends the due date for final Board action until October 1, 2022.

Section 22.4(a) of the Environmental Protection Act (Act) (415 ILCS 5/22.4(a) (2020)) requires the Board to adopt hazardous waste rules that are IIS to USEPA's RCRA Subtitle C (42 U.S.C. §§ 6921 *et seq.* (2019)) 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) (2020)). 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 (2020)) 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 WILL 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 was July 7, 2021. The Board adopted an order on June 17, 2021 extending the due date until November 1, 2021. *See* 45 Ill. Reg. 8118 (July 2, 2021). Meeting the November 1, 2021 deadline did not occur. It is now necessary to again extend the due date.

The Board reserved docket R22-5 to accommodate USEPA actions relating to hazardous waste during the first half of 2021. During this time, USEPA took two hazardous waste-related actions that did not require immediate Board action:

February 9, 2021 (86 Fed. Reg. 8713):

USEPA authorized segments of the Illinois program.

May 19, 2021 (86 Fed. Reg. 27226):

USEPA updated the Clean Water Act analytical methods, many of which are incorporated by reference into the Illinois hazardous waste rules.

The Board dismissed docket R22-5 on July 29, 2021 in favor of noting USEPA USEPA's February 9, 2021 approval of the Illinois program and updating the incorporation by reference in docket R21-13.

The Board reserved docket R22-13 to accommodate USEPA actions relating to hazardous waste during the second half of 2021. During this time, USEPA took one hazardous waste-related action amending rules that have counterparts in the Illinois regulations:

October 1, 2021 (86 Fed. Reg. 54381):

USEPA adopted conforming changes to recovery and disposal codes for hazardous waste imports and exports between Canada and the United States.

The statutory due date for completing Board action on USEPA's amendments is October 1, 2022.

**SUMMARY OF NEEDED CORRECTIONS IN RCRA SUBTITLE C AND
UIC PERMIT RULES**

Reviewing the text of the RCRA Subtitle C and UIC permit rules in Parts 702 through 705, the Board determines that numerous non-substantive amendments are needed to various rules. Most are based on changes in style over the nearly 40 years since the Board adopted the first of those rules. Some correct errors and clarify rules. Others are based on intervening changes in the regulatory landscape.

The Board opened reserved docket R22-19 to update the permit rules. Reviewing the RCRA Subtitle C rules, starting with the permit rules. The close link between the RCRA Subtitle C and UIC permit rules and extent of revisions needed in all of them prompts consideration under a separate docket number.

CONSOLIDATION OF DOCKETS

The Board finds that consolidating the R21-13 RCRA Subtitle C update for the second half of 2020, the R22-13 RCRA Subtitle C update for the second half of 2021, and the R22-19 corrections to the RCRA Subtitle C and UIC permit rules is warranted. Consolidation will allow expedient adoption of all the amendments involved. The close association of the subject matters of the three dockets allows consolidation.

EXTENSION OF DUE DATE AND REASONS FOR DELAY

The Board finds that additional time is needed to complete the amendments in the R21-13 docket. By an order dated June 17, 2021, the Board previously extended the due date until November 1, 2021. Events have proven that time insufficient. The Board now extends the due date for final action until October 1, 2022. This is the statutory due date for the amendments in the R22-13 docket.

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 now-consolidated docket R21-13/R22-13/R22-19. This includes the texts of Parts 702 through 705 and 720 and a portion of Part 721 in this consolidated docket. The Board plans to complete review of the RCRA Subtitle C and UIC rules in future updates.

The time involved in reviewing this first portion of the hazardous waste rule has exceeded expectations. The stylistic changes are very significant, but the Board has also encountered problems arising through changed laws and regulatory structures. Parts 702 through 705 are further among the oldest and It has not allowed timely progress on the R21-13 amendments.

The Board plans to complete the amendments in consolidated docket R21-13/R22-13/R22-19 on the following schedule:

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| Proposal adopted date: | July 7, 2022 |
| Publication submission deadline: | July 18, 2022 |
| <i>Illinois Register</i> publication date: | July 29, 2022 |
| End of 45-day public comment period: | September 12, 2022 |
| Adoption date: | September 22, 2022 |
| Possible filing and effective date: | September 30, 2022 |
| Possible <i>Illinois Register</i> publication date: | October 14, 2022 |

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 February 17, 2022, by a vote of 5-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk
Illinois Pollution Control Board