

ILLINOIS POLLUTION CONTROL BOARD

November 3, 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 J. Van Wie and M. Gibson):

In rulemaking docket R21-13 and rulemaking docket R22-13, 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. In rulemaking docket R22-19, the Board will further extensively correct and update the hazardous waste (RCRA Subtitle C) and underground injection control (UIC) permit rules.

On February 17, 2022, the Board consolidated these three dockets with one another for concurrent consideration. In the same order, the Board found that it needed additional time to complete action on USEPA amendments, provided reasons for delay, and extended the adoption deadline to October 1, 2022. The Board today finds that it needs additional time to complete the amendments and extends the due date for final Board action until July 1, 2023.

STATUTORY BACKGROUND

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 that "the Board shall complete its rulemaking proceedings within one year after the adoption of the corresponding federal rules." 415 ILCS 5/7.2(b) (2020). Section 7.2(b) also provides that the one-year adoption deadline "may be extended by the Board for an additional period of time if necessary to complete the rulemaking proceeding." *Id.* To extend the deadline, the Board must find that the one-year period is not sufficient to complete the rulemaking and state specific reasons for the extension. *Id.* The Board must publish a notice of the extension in the *Illinois Register*. *Id.*

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. In its February 17, 2022 order, the Board summarized these two USEPA actions:

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. The Board adopted an order on February 17, 2022 extending the due date until October 1, 2022. *See, id.* Meeting the deadline would have required the Board to propose amendments no later than July 7, 2022.

The Board reserved docket R22-5 to accommodate USEPA actions relating to hazardous waste during the first half of 2021. The Board later dismissed docket R22-5 on July 29, 2021 in favor of noting USEPA's February 9, 2021 approval of the Illinois program and updating the incorporation by reference in docket R21-13. In its February 17, 2022 order, the Board summarized the two USEPA actions taken relating to hazardous waste in the first half of 2021:

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 reserved docket R22-13 to accommodate USEPA actions relating to hazardous waste during the second half of 2021. In its February 17, 2022 order, the Board summarized the single action USEPA took relating to hazardous waste-related rules that have counterparts in the Illinois regulations during this time:

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.

Based on the earliest USEPA action during this period, the statutory due date for completing Board action in this docket was October 1, 2022. Meeting that deadline would have required the Board to propose amendments no later than July 7, 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. The Board is in the process of reviewing the RCRA Subtitle C and UIC rules, starting with the permit rules.

EXTENSION OF DUE DATE AND REASONS FOR DELAY

The Board finds that additional time is needed to complete the amendments based on the USEPA actions summarized above. The Board extends the due date for final action until July 1, 2023.

While addressing these USEPA actions, the Board is also reviewing the entire text of the Illinois hazardous waste regulations. This review will allow the Board to clarify and simplify the rules, make corrections where necessary, and also propose changes based on suggestions regularly made by the Joint Committee on Administrative Rules. The Board staff member who has worked on hazardous waste updates for nearly 30 years also 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 Board considers reviewing and proposing revisions to its rules important and productive. However, the process is complex and time-consuming. The large volume of text and effort needed to review the Board's rules has required more time than first expected. The Board believes that delay is justified by this experienced and comprehensive review of IIS rules. As stated in the Board's February 17, 2022 order, the large volume of text and effort needed for the review will not allow completing this review in a single rulemaking. The stylistic changes are significant, but the Board has continued to encounter problems arising through changed laws and regulatory structures. Further, Parts 702 through 705 are among the oldest rule text, which has impeded timely progress on the R21-13 amendments. The Board still plans to complete review of the RCRA Subtitle C and UIC rules in future updates.

The Board plans to complete the amendments in this consolidated docket on the following schedule to meet the extended deadline:

Proposal adopted date:	Thursday, April 6, 2023
Publication submission deadline:	Monday, April 10, 2023
Expected <i>Illinois Register</i> publication:	Friday, April 21, 2023
End of 45-day public comment period:	Monday, June 5, 2023
Adoption date:	Thursday, June 15, 2023
Expected filing and effective date:	Monday, June 26, 2023
Expected <i>Illinois Register</i> publication date:	Friday, July 7, 2023

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 November 3, 2022, by a vote of 4-0.

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