

ILLINOIS POLLUTION CONTROL BOARD

May 1, 1997

IN THE MATTER OF:)
)
RCRA UPDATE, USEPA REGULATIONS) R96-10
(July 1 through December 31, 1995)) (Identical in Substance Rules)

IN THE MATTER OF:)
)
UIC UPDATE, USEPA REGULATIONS) R97-3
(January 1 through June 30, 1996)) (Identical-in-Substance Rules)

IN THE MATTER OF:)
)
RCRA UPDATE, USEPA REGULATIONS) R97-5
(January 1 through June 30, 1996)) (Identical in Substance Rules)

ORDER OF THE BOARD (by K.M. Hennessey):

Pursuant to Section 13(c) and 22.4(a) of the Environmental Protection Act (Act) [415 ILCS 5/13(c) & 22.4(a) (1992)], the Board is preparing to propose amendments to the RCRA Subtitle C hazardous waste (RCRA Subtitle C) and underground injection control (UIC) regulations. By this order, the Board sets forth reasons for delay as to the RCRA Subtitle C amendments.

Section 22.4(a) provides for quick adoption of regulations that are “identical in substance” to federal regulations adopted by the U.S. Environmental Protection Agency (USEPA) to implement Sections 3001 through 3005 of the Resource Conservation and Recovery Act of 1976 (RCRA, 42 U.S.C. §§ 6921-6925) and that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) [5 ILCS 100/5-35 & 5-40 (1992)] shall not apply. Section 13(c) similarly provides with respect to underground injection control regulations adopted by USEPA pursuant to Section 1421 of the Safe Drinking Water Act (SDWA; 42 U.S.C. § 300h). Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal RCRA Subtitle C regulations are found at 40 CFR 260 through 268, 270 through 271, 279, and, more recently, 273. The federal UIC regulations are found at 40 CFR 144, 146, and 148.

Docket R96-10: July 1 through December 31, 1995 RCRA Subtitle C Amendments

USEPA amended the federal RCRA Subtitle C regulations several times during the period July 1 through December 31, 1995, summarized as follows:

Federal ActionSummary

July 7, 1995
(61 Fed. Reg. 35452)

Corrections to Subpart CC rules. USEPA corrected the docket number in the *Federal Register* preamble discussion of December 6, 1994.

July 11, 1995
(61 Fed. Reg. 35703)

Addition of test method for testing biodegradability of absorbent materials. USEPA added a test method for testing the biodegradability of sorbent materials for the purposes of the landfill disposal ban imposed on containerized liquid hazardous waste absorbed in such materials.

August 14, 1995
(61 Fed. Reg. 41817)

Notice of revised interpretation of carbamate rule. USEPA revised its interpretation of its carbamate rules to determine that wastes from the off-site production of non-carbamate intermediates that are used exclusively in carbamate production are not subject to the carbamate rule.

September 29, 1995
(61 Fed. Reg. 50426)

Partial Stay of Subpart CC rules. USEPA stayed the organic material emission rules of the hazardous waste treatment, storage, and disposal facility standards as they apply to emissions from tanks, containers, and surface impoundments containing organic peroxide manufacturing waste.

October 23, 1995
(61 Fed. Reg. 54311)

Correction of hazardous waste delisting for entity with an Illinois facility. USEPA restored the text of the Enviro Corp. delisting inadvertently deleted when USEPA intended to amend the delisting to delete the waste from a single source (in Connecticut) on February 8, 1994.

October 30, 1995
(61 Fed. Reg. 55202)

Stay of used oil mixtures rule. USEPA stayed the provision of the used oil rules that pertains to mixtures of used oil and hazardous waste. That provision regulated mixtures of used oil and characteristic hazardous waste (Subpart C waste) or waste that was listed because it exhibited a characteristic (Subpart D waste) under the used oil regulations, rather than under the generally-applicable hazardous waste regulations. Thus, the stay has the effect of making these waste subject to more stringent regulations.

November 13, 1995
(61 Fed. Reg. 56952)

Delayed effective date for Subpart CC rules. USEPA delayed the effective date of the organic material emission rules of the hazardous waste treatment, storage, and disposal facility standards as they apply to emissions from tanks, containers, and surface impoundments for an additional six months, until June 6, 1996.

December 11, 1995
(61 Fed. Reg. 63417)

Amendments to permitting procedural requirements. USEPA amended the RCRA Subtitle C permitting procedures to “improve the process for permitting facilities that store, treat, or dispose of hazardous wastes by providing earlier opportunities for public involvement in the process and expanding public access to information throughout the permitting process and the operational lives of facilities.”

The Board will not need to take action based on some of the federal RCRA Subtitle C amendments that occurred during the period of July 1 through December 31, 1995, but Board action will be required by others of these federal amendments. The Board dealt with the federal actions of July 7, September 29, and November 13, 1995 in docket R95-20, adopted June 20, 1996. No further action is required of the Board on those matters. Further, for various reasons, it is unlikely that the Board will need to amend substantive aspects of the Illinois regulations based on the federal actions of August 14, October 23, and October 30, 1995. The Board has not yet taken action on the federal actions of July 11 and December 11, 1995, and these federal revisions will require Board action under docket R96-10.

In addition to the direct revisions to the RCRA Subtitle C regulations during the time period of docket R96-10, USEPA amended the federal water pollution control regulations three times during the period July 1 through December 31, 1995 in a way that could affect the Illinois RCRA Subtitle C rules. These federal actions revised analytical methods of 40 CFR 136 as follows:

Federal ActionSummary

August 2, 1995
(61 Fed. Reg. 39586)

USEPA added a disk extraction method for testing wastewater for chlorinated pesticides and PCBs.

August 28, 1995
(61 Fed. Reg. 44670)

USEPA added three methods for determination of total Kjeldahl nitrogen (TKN) in wastewater.

October 16, 1995
(61 Fed. Reg. 53529)

USEPA added whole effluent toxicity testing to the approved methods.

The methods codified in 40 CFR 136 are incorporated by reference at Section 720.111 of the Illinois RCRA Subtitle C rules for the purposes of the hazardous waste and underground injection control regulations. These amendments may require an update to that incorporation under docket R96-10.

Docket R97-5: January 1 through June 30, 1996 RCRA Subtitle C Amendments

USEPA Amended its RCRA Subtitle C regulations several more times during the six-month time period of docket R97-5. The federal actions during this period of January 1 through June 30, 1996 are summarized as follows:

Federal ActionSummary

February 9, 1996
(61 Fed. Reg. 4903)

Subpart CC organic material emissions standards technical amendments. USEPA made clarifying and corrective amendments to the text of the December 6, 1994 Subpart CC organic material emission standards applicable to tanks, containers, and surface impoundments containing hazardous waste.

March 15, 1996
(61 Fed. Reg. 10684)

Relating to federal authorization of Illinois program. USEPA authorized segments of the Illinois RCRA Subtitle C program. Included are the “non-HSWA Cluster VI”, “HSWA Cluster II”, and “RCRA Clusters I-III” rules-- i.e., rules adopted by USEPA between July 1, 1989 and June 30, 1993. The Board adopted these program amendments in dockets R90-2, R90-11, R91-1, R91-13, R91-26, R92-1, and R93-4 between July 3, 1990 and November 22, 1993.

March 26, 1996
(61 Fed. Reg. 13103)

Correction to exclusion for recovered oil reinjected into refining process. USEPA corrected an error in its July 28, 1994 exclusion of recovered oil from the definition of solid waste.

April 8, 1996
(61 Fed. Reg. 15596)

Phase III land disposal restrictions (LDRs). USEPA adopted treatment standards for carbamate pesticide wastes and primary aluminum production wastes. USEPA further amended the treatment standards for land disposal of wastes exhibiting a characteristic of hazardous waste to require not only the removal of the applicable characteristic(s), but also any underlying hazardous waste constituents.

April 8, 1996
(61 Fed. Reg. 15662)

Phase III LDRs partial withdrawal and amendment. USEPA withdrew those segments of the contemporaneous amendments accompanying the Phase III LDRs that derived from the decision in *Chemical Waste Management v. EPA*, 976 F. 2d 2 (D.C. Cir. 1992), *cert. denied*, 507 U.S. 1057 (1993). Adoption of the Land Disposal Program Flexibility Act of 1996, Pub. L. 104-119, effective March 26, 1996, effectively overrode that decision. USEPA also amended segments of the September 19, 1994 Phase II LDRs that were also overruled by Pub. L. 104-119.

April 12, 1996
(61 Fed. Reg. 16309)

Hazardous waste import and export regulations. USEPA amended the federal rules to incorporate identification of wastes (green, red, and amber) that are subjected to the graduated system of import and export controls under the Organization for Economic Cooperation and Development (OECD) Council Decision C(92)39.

April 30, 1996
(61 Fed. Reg. 19117)

Phase III LDRs corrections (two separate actions). In one action, USEPA corrected the effective dates set forth for its Phase III LDR rules in the April 8 (61 Fed. Reg. 15596) action.

June 5, 1996
(61 Fed. Reg. 28508)

Subpart CC organic material emission standards amendment to effect partial stay. USEPA further postponed implementation of the December 6, 1994 Subpart CC organic material emissions requirements until October 6, 1996.

June 28, 1996
(61 Fed. Reg. 33680)

Phase III LDRs corrections. USEPA made technical corrections to the April 8, 1996 Phase III LDRs and partial withdrawal.

June 28, 1996
(61 Fed. Reg. 33691)

Used oil standards notice of judicial vacatur of administrative stay of used oil mixture rule. USEPA amended the September 10, 1992 used oil mixtures rule in response to a January 19, 1996 vacatur, in *Chemical Waste Management, Inc. v. EPA*, 976 F.2d 2 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1961 (1993), of USEPA's October 30, 1995 administrative stay of the rule.

As with the previous docket time-frame, the Board will not need to act in docket R97-5 based on some of the January 1 through June 30, 1996 federal RCRA Subtitle C amendments, but the Board will be required to amend the Illinois rules based on others. The Board dealt with the federal amendments of June 5, 1996 in docket R95-20, on June 20, 1996. Further, the March 15, 1996 action related to federal authorization of the Illinois RCRA Subtitle C program, and one of the actions of June 28 basically did little more than reverse an earlier action. It is not likely that any regulatory amendments will be necessary based on these three USEPA actions. The Board has not yet acted with regard to the federal actions of February 9, March 26, April 8 (two actions), April 12, April 30, and June 28, 1996 (first action), so the Board will likely need to amend the Illinois RCRA Subtitle C regulations to reflect the changes brought about by these USEPA actions.

Summarizing the federal actions of the July 1 through December 31, 1995 time-frame of docket R96-10, the Board must act with regard to the federal actions of July 11, August 2 and 28, October 16, and December 11, 1995. Summarizing the federal actions of the January 1 through June 30, 1996 time-frame of docket R97-5, the Board must act with regard to the federal actions of February 9, March 26, April 8, April 12, April 30, and June 28, 1996.

Docket R97-3: January 1 through June 30, 1996 UIC Amendments

In addition to affecting the RCRA Subtitle C regulations, the federal actions of April 8 (both actions) and 30 and June 28, 1996 (second action) affected the underground injection control (UIC) rules. The Board must act with regard to these actions under the UIC update docket R97-3.

REASONS FOR DELAY

Section 22.4(a) provides for quick adoption of regulations that are “identical in substance” to federal regulations adopted by USEPA to implement Sections 3001 through 3005 of the Resource Conservation and Recovery Act of 1976 (RCRA Subtitle C, 42 U.S.C. §§ 6921-6925). Section 7.2(a) of the Act requires the Board to complete its identical-in-substance rulemaking actions within one year after the date of the USEPA action on which they are based. Section 7.2(b) allows the Board to extend the deadline for adoption by publication of a notice of reason for delay in the *Illinois Register*. The Board hereby sets forth the reasons for delay for the purposes of such an extension with regard to the RCRA Subtitle C amendments of dockets R96-10 and R97-5.

On October 17, 1996, the Board adopted an order in this matter that set forth the reasons for delay. It set forth those reasons as follows:

Due to the present and recent-past demands on Board resources and personnel, including those associated with completing the two prior updates, R95-4/R95-6 and R95-20, the Board has been unable to commence the amendments in dockets R96-10 and R97-5 in such a way that it has been able to complete rulemaking activities within one year. The amendments involved in dockets R95-4/R95-6 and R95-20 represented significant efforts on the part of the Board, given the magnitude of the amendments and competing priorities for the Board and its staff. Those amendments, the magnitude of the amendments involved in consolidated docket R96-10/R97-3/R97-5, and other competing priorities have resulted in unavoidable delay.

The Board now finds it necessary to set forth reasons for delay one more time in this matter. In addition to the reasons for previous delay, the Board has encountered others. Principally, these deal with the format in which federal amendments are submitted to the public. The federal Government Printing Office, which prints the *Federal Register* and the *Code of Federal Regulations*, does not require federal agencies to highlight the exact text of their amendments, as is required in Illinois by the Secretary of State for publication in the *Illinois Register*. Rather than omit unaffected segments of text from certain sections under amendment, USEPA simply printed the entire text of the massive tables to 40 CFR 268.40 and 268.48 and nearly the entire revised text of 40 CFR 264, subpart CC and 265, subpart CC that it had amended. As a result, the Board must compare the text of the federal amendments with the prior version on a line-by-line basis, which has proven much more time-consuming than originally estimated.

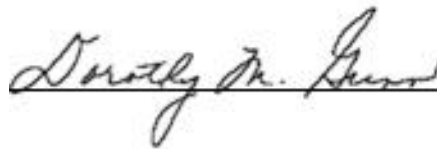
At present, the Board anticipates assembling a proposal for public comment for consideration at one of our regularly-scheduled meetings between mid-June and July. Allowing adequate time for publication of Notices of Proposed Amendments in the *Illinois Register*, for Board adoption at a regularly-scheduled meeting following the public comment period, and a 30-day moratorium on filing to allow USEPA comment on the adopted rules, the

Board presently anticipates filing adopted amendments with the Secretary of State before October 15, 1997.

The Board will cause a copy of the above segment of this proposed opinion to be published in the *Illinois Register*, as required by Section 7.2(b) of the Act.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted on the 1st day of May, 1997, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board