

ILLINOIS POLLUTION CONTROL BOARD
October 19, 1995

IN THE MATTER OF:)
) R95-20
RCRA SUBTITLE C UPDATE,) (Identical in Substance Rules)
USEPA REGULATIONS)
(1-1-95 THROUGH 6-30-95))

ORDER OF THE BOARD (by E. Dunham):

This matter is before the Board on a October 13, 1995 request of TDI Batteries, docketed as public comment number 3 (PC 3), which seeks expedited Board consideration of certain federal amendments to the RCRA Subtitle C regulations. The Board further uses this opportunity to raise other matters important to this proceeding. The first is the need to set forth a reason for delay, and thereby extend the deadline for ultimate adoption of these amendments by the Board.

EXPEDITED CONSIDERATION

In PC 3, TDI Batteries states that it manufactures rechargeable batteries, including nickel-cadmium cells in Illinois. TDI is interested in starting a battery recycling program. It wants the Board to promptly adopt regulations that are identical-in-substance to the new federal "Universal Waste Rule", 40 CFR 273, adopted by USEPA on May 11, 1995. The Universal Waste Rule relieves persons engaged in certain activities, such as collecting nickel-cadmium batteries for recycling, from major portions of the burden of complying with the existing RCRA Subtitle C regulations. As such, the Universal Waste Rule constitutes a federal regulatory relaxation, and the existing Illinois regulations will continue to apply in this state until the Board adopts the Universal Waste Rule.¹

The Board does not desire to prolong the time between federal promulgation and our adoption of corresponding identical-in-substance amendments. This is especially true during a time when Illinois regulations are temporarily more stringent than the corresponding federal rules. For these reasons, the Board hereby grants expedited consideration to the extent consistent with our current workload and available resources. We will immediately begin to assemble the proposal. As is more fully explained below, we intend to consider a proposal for publication of Notices of Proposed Amendments in the Illinois Register at either

¹ Section 3006 of RCRA (42 U.S.C. § 6926) provides that state regulations apply in an authorized state in lieu of the federal regulations. Section 3009 (42 U.S.C. § 6929) provides that states may establish regulations that are more stringent than the federal regulations.

of our regularly-scheduled meetings of November 16 or December 7, 1995.

REASON 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, 42 U.S.C. §§ 6921-6925). Section 22.4(a) further provides that the Board may deal with multiple federal amendments that occurred in a single six-month period together in the same proceeding. Thus, it has been the Board's practice to deal with the federal RCRA Subtitle C amendments in two dockets each calendar year: one for the period January 1 through June 30, and the other for the period July 1 through December 31.

Section 7.2(b) of the Act requires the Board to complete our rulemaking proceedings within one year of when USEPA adopted its corresponding rules. In the case of dockets where we have batched several rulemakings together, the Board uses the earliest federal action in the period to determine the Section 7.2(b) due date for completion.

The Board is aware that USEPA amended the federal hazardous waste regulations during the period January 1 through June 30, 1995 in the following actions:

* 59 Fed. Reg. 242 (Jan. 3, 1995)	Technical Corrections to Phase II LDRs
59 Fed. Reg. 3089 (Jan. 13, 1995)	Update to testing and monitoring methods
59 Fed. Reg. 6666 (Feb. 3, 1995)	Response to City of Chicago v. Environmental Defense Fund decision
59 Fed. Reg. 7366 (Feb. 7, 1995)	Determination that additional regulation is necessary for cement kiln dust
59 Fed. Reg. 7824 (Feb. 9, 1995)	New hazardous waste listings for six carbamate production wastes; addition of 58 commercial chemical product wastes; exemption of certain biological treatment sludges
59 Fed. Reg. 17001 (Apr. 4, 1995)	Update to testing and monitoring methods

59 Fed. Reg. 17160 (Apr. 4, 1995)	Update to CWA analytical methods, incorporated by reference in 35 Ill. Adm. Code 720.111
59 Fed. Reg. 19165 (Apr. 17, 1995)	Corrections to carbamate waste listings
59 Fed. Reg. 25492 (May 11, 1995)	Universal Waste Rule
59 Fed. Reg. 25619 (May 12, 1995)	Correction to carbamate waste listings
* 59 Fed. Reg. 26828 (May 19, 1995)	Postponement of effective date for tank, container, and surface impoundment air emissions rules
60 Fed. Reg. 31114 (June 13, 1995)	Delisting of hazardous waste generated in Illinois by a Pennsylvania company
59 Fed. Reg. 33912 (June 29, 1995)	Deletion of obsolete, redundant, and outdated RCRA rules

The Board completed our proceedings on the federal amendments in the prior update docket, R95-6, on June 27, 1995, when we filed the amendments with the Office of the Secretary of State. Included in consolidated docket R95-4/R95-6, for the reasons stated in our opinion and order of June 1, 1995, were the federal amendments of January 3 and May 19, 1995. For these reasons, the federal action of January 13, 1995 is the earliest open action for the time frame of this docket, and the nominal due date for Board completion is January 13, 1996.

The demands on Board staff and resources and the aggregated magnitude of the federal actions included in this docket will make it impossible for the Board to meet the nominal deadline for completion of January 13, 1996. Meeting that deadline would have required Board adoption of a proposal for public comment by about September 7, 1995 for adoption of a final opinion and order by about November 16, 1995.²

For the foregoing reasons, the Board finds it necessary to

² Under agreement with USEPA, the Board delays filing adopted RCRA Subtitle C amendments for 30 days after we have voted to adopt them, in order to allow opportunity for USEPA comment. The cited dates in the text are those of regularly scheduled Board meetings that allow us to reliably complete all necessary actions and obtain Illinois Register publication of the appropriate notices.

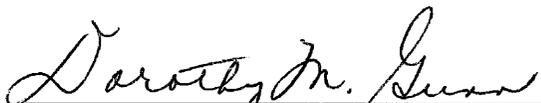
set forth reasons for delay and seek publication of the appropriate notice in the Illinois Register. The present and recent-past demands on Board resources and personnel, including those associated with completing the prior update, R95-4/R95-6, will result in a delay in completion of this proceeding. At present, the Board hopes to entertain a proposal for public comment by our regularly-scheduled meeting of December 7, 1995. This will allow us to consider adoption of the amendments no later than late February, 1996.

CSI HAZARDOUS WASTE DELISTING

The Board notes that the federal action of June 13, 1995 was a hazardous waste delisting for a waste generated by Conversion Systems, Inc. (CSI) at Sterling, Illinois. Unless the Board receives a specific request from CSI that we do so, the Board does not presently intend to include this federally-granted hazardous waste delisting in our proposal for public comment on or about December 7.

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 19th day of October, 1995, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board