

ILLINOIS POLLUTION CONTROL BOARD

January 26, 2007

IN THE MATTER OF:)
)
RCRA SUBTITLE C UPDATE, USEPA) R07-5
AMENDMENTS (January 1, 2006 though) (Identical-in-Substance
June 30, 2006)) Rulemaking - Land

IN THE MATTER OF:)
)
RCRA SUBTITLE C UPDATE, USEPA) R07-14
AMENDMENTS (July 1, 2006 though) (Identical-in-Substance
December 31, 2006)) Rulemaking - Land
) (Consolidated)

ORDER OF THE BOARD (by G.T. Girard):

The Board today consolidates two dockets, R07-5 and R07-14, containing related amendments and extends the deadline for completion of amendments in the consolidated docket. The consolidated docket concerns Illinois regulations that are “identical in substance” to hazardous waste regulations adopted by the United States Environmental Protection Agency (USEPA). The USEPA rules implement Subtitle C of the federal Resource Conservation and Recovery Act of 1976 (RCRA Subtitle C) (42 U.S.C. §§ 6921 *et seq.* (2003)).

The Board also finds that extension of the completion deadline is necessary for this consolidated docket under Section 7.2(b) of the Environmental Protection Act (Act), 415 ILCS 5/7.2(b) (2004). The final date for Board completion of the amendments is extended from April 5, 2007 to October 1, 2007.

SUBSTANCE OF THE RULES AND THE ORIGINAL TIMETABLE

The Federal Rules Involved in RCRA Subtitle C Update Docket R07-5

The Board reserved docket R07-5 on May 16, 2006, to accommodate federal RCRA Subtitle C amendments that USEPA adopted in the period January 1, 2006 though June 30, 2006. During this period, USEPA adopted one significant set of amendments. Those federal amendments to the hazardous waste regulations is briefly described as follows:

71 Fed. Reg. 16862 (April 4, 2006)

USEPA amended various provisions of the hazardous waste regulations to reduce the paperwork burden imposed by the rules. Some of the reduced requirements apply only to members of USEPA’s Environmental Performance Track Program. The affected rules include hazardous waste management facility standards and aspects of the permitting requirements and land disposal restrictions.

The Federal Rules Involved in RCRA Subtitle C Update Docket R07-14

The Board has reserved docket R07-14 to accommodate federal RCRA Subtitle C amendments that USEPA adopted in the period July 1, 2006 through December 31, 2006. During this period, USEPA has so far adopted two significant sets of amendments. Those federal amendments are briefly described as follows:

71 Fed. Reg. 40254 (July 14, 2006)

USEPA adopted a number of corrections to various of the hazardous waste and used oil management regulations.

71 Fed. Reg. 42928 (July 28, 2006)

USEPA amended the definition of hazardous waste to exclude cathode ray tubes (CRTs) that are managed within specified conditions. USEPA intends to encourage the reuse and recycling of used CRTs and glass from CRTs.

The Original Timetable for Completion of the R07-5 Amendments

Sections 7.2 and 22.4 of the Act (415 ILCS 5/7.2 and 22.4 (2004)) provide for quick adoption by the Board of regulations that are identical in substance to federal regulations that USEPA adopts to implement Subtitle C of the federal Resource Conservation and Recovery Act of 1976 (RCRA Subtitle C) (42 U.S.C. §§ 6921 *et seq.* (2003)). Section 22.4 also provides that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) (5 ILCS 100/5-35 and 5-40 (2004)) do not apply to the Board's adoption of identical-in-substance regulations. Section 7.2(b) requires that "the Board shall complete its rulemaking proceedings within one year after the adoption of the corresponding federal rule." 415 ILCS 5/7.2(b) (2004). In the instance of the present docket, that date would be April 4, 2007, one year from the earliest federal amendments involved in docket R07-5. In order to meet that deadline, the Board action would have been as follows:

Due date:	April 4, 2007
Proposal adopted date:	November 16, 2006
Publication submission deadline:	November 27, 2006
<i>Illinois Register</i> publication date:	December 8, 2006
End of 45-day public comment period:	January 22, 2007
Adoption date:	February 1, 2007
End of 30-day holding period:	March 1, 2007
Possible filing and effective date:	March 12, 2007
Possible <i>Illinois Register</i> publication date:	March 23, 2007

The Board has been unable to follow this timetable.

**BOARD CONSOLIDATION OF THE TWO RCRA SUBTITLE C UPDATE
DOCKETS R07-5 AND R07-14**

The Board today consolidates the two RCRA Subtitle C update dockets, R07-5 and R07-14. Although the subject matters of the amendments involved in the two dockets are distinct, they both affect some of the same existing provisions in the hazardous waste rules--*i.e.*, there is some overlap in the provisions involved in the various amendments.

The Board finds that consolidation of the two dockets is desirable. Consolidation will avoid unnecessary duplication of effort, conserve review time for the regulated community, the public, and Board and Illinois Environmental Protection Agency staff, and it will expedite adoption of all of the amendments.

**EXTENSION OF THE TIME FOR COMPLETION OF THE PRESENT
AMENDMENTS**

Section 7.2(b) provides for extension of the deadline for final Board action in identical-in-substance rulemakings as follows:

The one-year period may be extended by the Board for an additional period of time if necessary to complete the rulemaking proceeding. In order to extend the one-year period, the Board must make a finding, based upon the record in the rulemaking proceeding, that the one-year period is insufficient for completion of the rulemaking, and such finding shall specifically state the reasons for the extension. Except as otherwise provided above, the Board must make the finding that an extension of time is necessary prior to the expiration of the initial one-year period, and must also publish a notice of extension in the Illinois Register as expeditiously as practicable following its decision, stating the specific reasons for the Board's decision to extend. 415 ILCS 5/7.2(b) (2004).

The deadline for final Board action in this consolidated docket is April 4, 2007, which is one year from the earliest amendments involved.

The Board finds it necessary to extend the one-year period for completion of the present amendments. The Board finds the statutory one-year period in this consolidated docket is insufficient for completion of the amendments. The Board was unable to initiate this rulemaking earlier due to the unusually high demands on staff resources over the last several months as a result of a greatly increased volume of complex federal rulemaking, *e.g.* the very recently completed consolidated underground injection control, municipal solid waste landfill, and hazardous waste update docket, R06-16/R06-17/R06-18. In addition, the Board expects this rulemaking to involve a significant volume of text. Corrections and amendments to more than 240 separate federal provisions underlie the amendments. Nevertheless, few of the amendments will have a significant effect on the rules, since the vast majority of the amendments are based on the April 4, 2006 "paperwork reduction" amendments and the July 14, 2006 corrections to the *Code of Federal Regulations*.

The Board presently anticipates that completion of the amendments in this consolidated docket can occur by October 1, 2007, according to the following projected action dates:

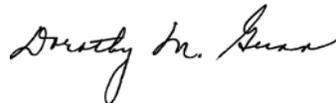
Proposal adopted date:	May 3, 2007
Publication submission deadline:	May 14, 2007
<i>Illinois Register</i> publication date:	June 1, 2007
End of 45-day public comment period:	July 16, 2007
Adoption date:	August 23, 2007
End of 30-day holding period:	September 23, 2007
Possible filing and effective date:	October 1, 2007
Possible <i>Illinois Register</i> publication date:	October 12, 2007

This schedule builds a slight margin into the deadline that might accommodate further minor delay, such as the need to respond to significant comments on the proposed rules, allowing for the Board vote to adopt the amendments to embrace one more Board meeting cycle, until August 23, 2007. This would allow filing the amendments with the Office of the Secretary of State by October 1, 2007, after expiration of the 30-day holding period required by the agreement between USEPA and the State of Illinois.

The Clerk of the Board will cause publication of a notice of this extension of the consolidated docket to appear in the *Illinois Register* that sets forth the foregoing explanation for the extension.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 26, 2007, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board