

ILLINOIS POLLUTION CONTROL BOARD  
December 3, 1992

IN THE MATTER OF: )  
 ) R92-18  
CONTINGENCY PLAN UPDATE ) (Identical in Substance  
(USEPA RULES THROUGH 12/31/92) ) Rules)

EXTENSION OF TIME

ORDER OF THE BOARD (by J. Anderson):

On October 1, 1992, the Board opened this Docket for the purpose of updating the State contingency plan (Contingency Plan) regulations contained in 35 Ill. Adm. Code 750. The contingency plan regulations are patterned after the USEPA CERCLA, commonly referred to as "Superfund", regulations found in 40 CFR 300. The Board's contingency plan regulations address spills of hazardous materials, and prioritization of remediation projects to be funded by the State. The regulations were promulgated so as to be utilized by the Illinois Environmental Protection Agency (Agency) in concert with the Agency's administration of the legislatively appropriated "State Superfund" monies.

We note, however, that while the Act requires that the contingency plan regulations be patterned after the USEPA "Superfund" regulations, their adoption is not required by the USEPA. In this respect, the contingency plan regulatory program differs from most other "identical in substance" programs (such as RCRA).

Sections 7.2 and 22.7 of the Environmental Protection Act (Act) require the Board to adopt the contingency plan regulations on a "fast track" basis pursuant to "identical in substance" rulemaking procedures. Specifically, Section 22.7 requires the Board to adopt regulations which are identical in substance to the federal regulations or amendments thereto promulgated by the Administrator of the United States Environmental Protection Agency to implement Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). (Ill. Rev. Stat. 1991, ch. 111 and 1/2. par. 1022.7). Section 7.2(b) of the Act requires the Board to adopt a rule within one year of adoption of a federal rule, unless the Board extends the time based on a finding that the time is insufficient, and stating the reasons. The Board is to specify a date certain anticipated for completion unless a specified event beyond the Board's control prevents such specificity.

For the reasons stated below, the Board finds that the time has been insufficient, and that it anticipates completion by April 1, 1993.

0137-0727

The contingency plan regulations were adopted in R84-5, on June 8, 1984. The adopting Opinion appears at 59 PCB 319 (August 2, 1984). Until recently, the Board had not initiated an update rulemaking. Given its quite limited resources, the Board felt that it must give its highest priority attention to keeping up with the ongoing, voluminous "identical in substance" rulemakings implementing major federally mandated - and funded - programs. (The Board has handled, from rulewriting to adoption, some 26 rulemakings in the RCRA program alone.) We have also been aware that, due to limited funding in recent times, this was not a high activity program for the Agency.

The Board has been making every effort to allocate the resources to proceed with a contingency plan update. In addition to the Board's desire to respond to the "fast track" provisions in the Act, two events have occurred that make it necessary, if difficult, for the Board to allocate its resources to an update.

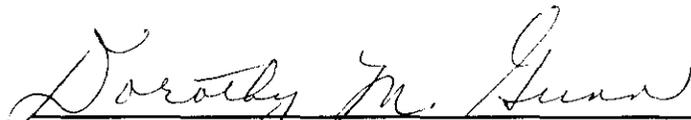
There have been voluminous amendments to the USEPA CERCLA regulations in 40 CFR 300 at 55 Fed. Reg. 8813, March 8, 1990. These amendments appear to effectively replace the old rules. Action on a major update such as this will be essential to a State "Superfund" program, even more so if the funding is reactivated.

Additionally, the Illinois appellate court has ruled that the Agency's rules regarding the State Remedial Action Priority List (SRAPL) is unacceptable, thus leaving no valid mechanism for prioritizing sites. (States Land Improvement Corp. v. IEPA, Fourth District, June 25, 1992; 596 N.E. 2d 1164.) The Agency's rules flowed from the Board's Contingency plan regulations. (See discussion in the R84-5 Opinion, at 5, 6). While States Land was on appeal to the Illinois Supreme Court, the Board delayed proceeding with the update because it was uncertain whether events might occur that were beyond the Board's control as regards its own regulations. However, this reason is no longer valid since the Supreme Court declined to review the case on October 7, 1992 ruling. Moreover, there is a potential for the appellate court's concerns about Agency's SRAPL rules to be addressed in the Board's update reflecting the federal program changes.

Pursuant to Section 7.2(b) of the Act, the Board will submit this order for publication in the Illinois Register as expeditiously as possible.

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 3rd day of December, 1992, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board