

ILLINOIS POLLUTION CONTROL BOARD
September 20, 2007

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

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

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

The Board today finds that extension of the rulemaking 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) (2006). The final date for Board completion of the amendments is extended from October 1, 2007 to April 16, 2008. 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.* (2005)).

This consolidated R07-5/R07-14 includes federal amendments that occurred during the calendar year 2007. During 2007, USEPA adopted three significant sets of amendments. Those federal amendments are 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.

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.

Sections 7.2 and 22.4 of the Act (415 ILCS 5/7.2 and 22.4 (2006)) 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 (2006)) 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) (2006). In the instance of the present docket, that date would have been April 4, 2007, one year from the earliest federal amendments involved in docket R07-5.

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) (2006).

By an order dated January 26, 2007, the Board consolidated the two dockets and extended the deadline for rule adoption in these consolidated dockets from April 5, 2007 to October 1, 2007.

The Board found it necessary to extend the one-year period for completion of the present amendments. The Board stated as follows:

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 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. RCRA Subtitle C Update, USEPA Amendments (January 1, 2006 through June 30, 2006), R07-5, RCRA Subtitle C Update, USEPA Amendments (July 1, 2006 through December 31, 2006), R07-14, slip op. at 3 (Jan. 26, 2007).

The Board now finds it necessary to further extend the time for completion of the present amendments. The Board encountered more delay than originally anticipated. The work involved in completing the amendments in SDWA Update, USEPA Amendments (January 1, 2006 through June 30, 2006), R07-2, SDWA Update, USEPA Amendments (July 1, 2006

through December 31, 2006), R07-11 (July 26, 2007) was more extensive than anticipated. That work delayed work on the amendments in the present docket. Further, assembling the amendments in the present docket has proven more difficult than foreseen at the time of the January 26, 2007 order. The amendments involve about 250 separate federal provisions, most of which are minor amendments and corrections. That volume of 250 federal provisions translates to more than 1,100 pages of corresponding Illinois regulations text. While the Board anticipates that the ongoing work will reduce this volume of text, since many of the federal corrections will not be necessary in the Illinois rules, the review of this volume of amendments has proven very time-consuming.

Finally, the Agency submitted a letter dated April 5, 2007 that included significant comments on the prior update docket, UIC Update, USEPA Amendments (January 1, 2005 through June 30, 2005), R06-16, RCRA Subtitle D Update, USEPA Amendments (January 1, 2005 through June 30, 2005), R06-17, RCRA Subtitle C Update (January 1, 2005 through June 30, 2005 and March 23, 2006), R06-18 (Nov. 16, 2006) (consolidated). Although untimely submitted for consideration in the consolidated R06-16/R06-17/R06-18 docket, to which they pertain, the Board is evaluating those comments in the present consolidated R07-5/R07-14 docket in order to assure the quality of the hazardous waste rules. Analysis of those comments has added to the delay in commencement of the amendments in this docket.

The Board now anticipates that completion of the amendments in this consolidated docket can occur by April 14, 2008, according to the following projected action dates:

Proposal adopted date:	December 20, 2007
Publication submission deadline:	December 31, 2007
<i>Illinois Register</i> publication date:	January 11, 2008
End of 45-day public comment period:	February 25, 2007
Adoption date:	March 6, 2008
End of 30-day holding period:	April 6, 2008
Possible filing and effective date:	April 14, 2008
Possible <i>Illinois Register</i> publication date:	April 25, 2008

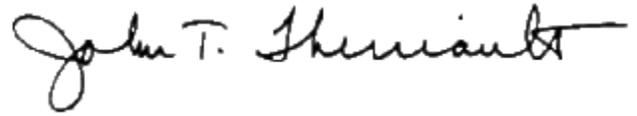
This schedule builds a slight margin into the deadline that might accommodate further minor delay, such as the need to respond to significant comments on the proposed rules.

Thus, the Board anticipates filing the amendments with the Office of the Secretary of State by April 14, 2008, 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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 20, 2007, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board