

ILLINOIS POLLUTION CONTROL BOARD

March 6, 2008

IN THE MATTER OF:)
)
WASTEWATER PRETREATMENT) R08-5
UPDATE, USEPA AMENDMENTS) (Identical-in-Substance
(January 1, 2007 though June 30, 2007)) Rulemaking - Land

IN THE MATTER OF:)
)
SDWA UPDATE, USEPA) R08-7
AMENDMENTS (January 1, 2007 though) (Identical-in-Substance
June 30, 2007)) Rulemaking - Land

IN THE MATTER OF:)
)
SDWA UPDATE, USEPA) R08-13
AMENDMENTS (July 1, 2007 though) (Identical-in-Substance
December 31, 2007)) Rulemaking - Land
) (Consolidated)

Consolidation and Deadline Extension Order.

ORDER OF THE BOARD (by T.E. Johnson):

The Board today consolidates three dockets, R08-5, R08-7, and R08-13, 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 in dockets R08-5 and R08-13 implement Sections 1412(b), 1414(c), 1417(a), and 1445(a) of the federal Safe Drinking Water Act (SDWA) (42 U.S.C. §§ 300g-1(a), 300g-3(c), 300g-6(a), and 300j-4(a) (2005)). The USEPA rules in docket R08-7 implement sections 307(b), (c), and (d) and 402(b)(8) and (b)(9) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. §§ 1317(b), (c), and (d) and 1342(b)(8) and (b)(9) (2005)).

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) (2006). The final date for Board completion of the amendments is extended from March 12, 2008 to August 15, 2008.

SUBSTANCE OF THE RULES AND THE ORIGINAL TIMETABLE

The Federal Rules Involved in SDWA Update Docket R08-5 and Wastewater Pretreatment Docket R08-7

The Board reserved docket R08-5 on July 12, 2007, to accommodate federal SDWA amendments that USEPA adopted in the period January 1, 2007 through June 30, 2007. At the same time, the Board reserved docket R08-7 to accommodate federal wastewater pretreatment amendments adopted in that same period. During this period, USEPA adopted one significant set of amendments that affected both the SDWA and wastewater pretreatment programs. Those federal amendments are briefly described as follows:

March 12, 2007 (at 72 Fed. Reg. 11200)

USEPA modified the testing procedures approved for sampling and analysis in programs established under the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA). The Primary Drinking Water Regulations are established under SDWA. The wastewater pretreatment rules are the indirect discharge segments of the rules developed under CWA.

The Federal Rules Involved in SDWA Update Docket R08-13

The Board reserved docket R08-13 on January 10, 2008 to accommodate SDWA amendments that USEPA adopted in the period July 1, 2007 through December 31, 2007. During this period, USEPA adopted one significant set of amendments. Those federal amendments are briefly described as follows:

October 10, 2007 (71 Fed. Reg. 65574)

USEPA amended the lead and copper rule to strengthen its implementation in the areas of monitoring, treatment processes, public education, customer awareness, and lead service line replacement. The federal amendments were effective on December 10, 2007. Compliance by regulated entities is due no later than December 10, 2009.

The Original Timetable for Completion of the R08-5 and R08-7 Amendments

Sections 7.2 and 13.3 of the Environmental Protection Act (Act) (415 ILCS 5/7.2 and 13.3 (2006)) require the Board to adopt regulations that are “identical in substance” to federal wastewater pretreatment regulations. The wastewater pretreatment regulations are rules adopted by the USEPA pursuant to sections 307(b), (c), and (d) and 402(b)(8) and (b)(9) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. §§ 1317(b), (c), and (d) and 1342(b)(8) and (b)(9) (2005)). Section 13.3 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. The federal wastewater pretreatment regulations are found at 40 C.F.R. 400 through 499.

Similarly, Sections 7.2 and 17.5 of the Environmental Protection Act (Act) (415 ILCS 5/7.2 and 17.5 (2006)) provide for quick adoption by the Board of regulations that are identical

in substance to federal regulations that USEPA adopts to implement Sections 1412(b), 1414(c), 1417(a), and 1445(a) of the federal SDWA (42 U.S.C. §§ 300g-1(b), 300g-3(c), 300g-6(c), and 300j-4(a) (2005)). Section 17.5 also provides that Title VII of the Act and Section 5 of the APA (5 ILCS 100/5-35 and 5-40 (2006)) do not apply to the Board's adoption of identical-in-substance regulations. The federal SDWA regulations are found at 40 C.F.R. 141 through 143.

Section 7.2(b) of the Act further 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 R08-5 and R08-7 reserved dockets, that date would be March 12, 2008, one year from the earliest federal amendments involved in dockets R08-5 and R08-7. In order to meet that deadline, the Board action would have been as follows:

Due date:	March 12, 2008
Proposal adopted date:	December 6, 2007
Publication submission deadline:	December 17, 2007
<i>Illinois Register</i> publication date:	December 28, 2007
End of 45-day public comment period:	February 11, 2008
Adoption date:	February 21, 2008
Possible filing and effective date:	March 3, 2008
Possible <i>Illinois Register</i> publication date:	March 14, 2007

The Board has been unable to follow this timetable.

BOARD CONSOLIDATION OF THE ONE WASTEWATER PRETREATMENT AND TWO SDWA DOCKETS R08-5, R08-7 AND R07-14

The Board today consolidates the one wastewater pretreatment docket, R08-5, together with the two SDWA update dockets, R08-7 and R08-13. The subject matter is common between the R08-5 wastewater pretreatment and R08-7 SDWA dockets, since the amendments to each are grounded in the same USEPA action. Although the subject matter of the amendments involved in the R08-13 docket is distinct, it may affect some of the same existing provisions in the drinking water rules that are affected by docket R08-7--*i.e.*, there may be some overlap in the provisions involved in the various amendments.

The Board finds that consolidation of the three 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) (2006).

The deadline for final Board action in this consolidated docket is March 12, 2008, 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 somewhat voluminous consolidated drinking water update docket, R07-2/R07-11, completed July 27, 2007, delayed work on the consolidated RCRA Subtitle C hazardous waste update, R07-5/R07-14, in which the Board presently plans to propose a significant volume of amendments on March 20, 2008. In addition, the Board expects this rulemaking to take a considerable amount of effort, since it involves updating the analytical methods used to demonstrate compliance with the SDWA and wastewater pretreatment requirements. Past experience has demonstrated that updating the methods requires a greater-than-expected amount of meticulous care and effort. Further, the consolidated R07-5/R07-14 RCRA Subtitle C amendments will be pending concurrent with the wastewater pretreatment and SDWA drinking water amendments in this present consolidated docket, and any significant issues that arise in that proceeding could affect the timing of progress in the present docket.

The Board presently anticipates that completion of the amendments in this consolidated docket can occur by August 15, 2008, according to the following projected action dates:

Proposal adopted date:	April 17, 2008
Publication submission deadline:	April 28, 2008
<i>Illinois Register</i> publication date:	May 9, 2008
End of 45-day public comment period:	June 23, 2008
Adoption date:	July 24, 2008
Possible filing and effective date:	August 4, 2008
Possible <i>Illinois Register</i> publication date:	August 15, 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, allowing for the Board vote to adopt the amendments to embrace one more Board meeting cycle, until August 7, 2008. This would allow filing the amendments with the Office of the Secretary of State by

August 15, 2008.

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 March 6, 2008, 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 flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board