

ILLINOIS POLLUTION CONTROL BOARD
June 21, 1990

IN THE MATTER OF:)
)
SDWA UPDATE; USEPA RULES) R90-4
(7/1/89 THROUGH 12/31/89)) (Rulemaking)

ORDER OF THE BOARD (by J. Anderson):

On May 24, 1990, in R88-26, pursuant to Sections 7.2 and 17.5 of the Environmental Protection Act (Act), the Board adopted regulations which are "identical in substance" with United States Environmental Protection Agency (USEPA) regulations implementing the Safe Drinking Water Act (SDWA). On June 7, 1990, the Board granted a motion filed by the Illinois Environmental Protection Agency (Agency) to extend the post-adoption comment period through July 17, 1990. The "identical in substance" rules adopted in R88-26 consist of a new 35 Ill. Adm. Code 611. R88-26 included USEPA rules adopted through June 30, 1989.

The Board has reserved this Docket as the first update Docket for the SDWA rules. Pursuant to Section 7.2(b) of the Act, the Board normally "batches" USEPA actions during a six-month period for adoption as Board rules. Board action is required within one year after the first USEPA action during the batch period, unless the Board enters an "extension of time" order, and publishes the "reasons for delay" in the Illinois Register. This Docket was to cover USEPA actions during the period 7/1/89 through 12/31/89.

Part 611 is derived from 40 CFR 141. There was only a single amendment to that Part during this batch period. This was at 54 Fed. Reg. 29998, July 17, 1989. The due date for action on this Docket is therefore July 17, 1990, unless the Board enters an extension of time Order.

The amendment concerns the incorporation by reference of certain journal articles concerning coliform tests. The incorporation occurs in 35 Ill. Adm. Code 611.102, and is discussed on page 30 of the May 24, 1990 Opinion in R88-26.

As was discussed in the R88-26 Opinion, these journal articles, including the additions in the July 17 Federal Register, cannot be incorporated by reference under the Illinois Administrative Procedure Act (APA). The APA authorizes the incorporation by reference "standards and guidelines", but not of journal articles. Furthermore, the American Society of Microbiology does not make copies of the articles available to

the public. Moreover, the articles are descriptions of the results of field trails of new methods for coliform analysis. They do not include a description of the methods themselves such that a person could read the articles and perform the tests. As such, they are not "standards or guidelines" in any sense of the terms, and are not even useful in the rules. The Board therefore dropped the references from R88-26. For the same reasons, there is no need to add the references from the July 17, 1989 Federal Register, which is the subject of this Docket. The Board will therefore dismiss this Docket.

There is still a possibility of reconsideration in R88-26. However, this will not occur before July 17, which is also the due date for any action on this rulemaking. If reconsideration should affect the issue which is the subject of this Docket, the Board will address the July 17, 1989, Federal Register in R88-26, rather than reopen this Docket.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 21st day of June, 1990, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board