

ILLINOIS POLLUTION CONTROL BOARD

March 18, 2010

IN THE MATTER OF:)	
RCRA SUBTITLE C UPDATE, USEPA)	R09-16
AMENDMENTS (July 1, 2008 through)	(Identical-in-Substance
December 31, 2008))	Rulemaking - Land)
_____)	
)	
RCRA SUBTITLE C UPDATE, USEPA)	R10-4
REGULATIONS (January 1, 2009 through)	(Identical-in-Substance Rulemaking -
June 30, 2009))	Land)
)	(Consolidated)

Proposed Rule. Consolidation Order. Deadline Extension Order.

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

This matter is before the Board on the Board's own motion. The Board finds that extension of the deadline for filing of amendments in this matter until September 13, 2010 is necessary. By this order the Board extends the deadline for adoption of the pending amendments and sets forth the reasons for delay.

REASONS FOR DELAY AND EXTENSION OF DEADLINE

The statutory due date for this proceeding was based on the earliest federal amendments included in this rulemaking, the October 30, 2008 amendments to the Definition of Solid Waste Rule. Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2008)). The statutory due date for filing the completed amendments, therefore, is one year from that date, so the Board must have filed the amendments with the Office of the Secretary of State before October 30, 2009.

By an order dated October 15, 2009, the Board previously set forth reasons for delay and extended the deadline as required by 7.2(b) of the Act (415 ILCS 5/7.2(b) (2008)). That order extended the time for the Board to complete rulemaking activities on these federal amendments until April 15, 2010. A Notice of Public Information Pursuant to 415 ILCS 5/7.2(b) appeared in the October 30, 2009 issue of the *Illinois Register*, at 33 Ill. Reg. 14841. The October 15, 2009 order recited the reasons for delay in that order as follows:

The Board has been developing a proposal for public comment in this matter, and more time than the Board estimated is necessary to complete that proposal. Due to the volume and complexity of the amendments involved in this consolidated update docket, the Board has not yet completed the proposal. The October 30, 2008 amendments to the Definition of Solid Waste Rule involved incorporation of a new administrative determination and four new self-implementing exclusions from the definition of solid waste into the Illinois regulations. This has required

extensive examination of the existing rules, as well as the new provisions and the addition of a voluminous new body of financial assurance requirements to the regulations. Also, the December 19, 2008 amendments to the excluded fuels rule involved incorporation of what is essentially an extensive new provision to the regulations. Similarly, the December 1, 2008 adoption of alternative generator requirements for eligible academic entities adds a new subpart to the hazardous waste generator standards.

Further, delay will allow the Board to consolidate the R09-16 and R10-4 dockets, in order to more promptly deal with the USEPA amendments of June 25, 2009 that will be the subject of docket R10-4.

The Board finds that further delay until September 13, 2010 has been necessary in development of a proposal for public comment based on the federal amendments involved in this proceeding. The reasons for further delay are the similar to those recited in the October 15, 2009 order: the issues involved in the federal amendments are complex, especially those involved in the October 30, 2008 amendments to the federal Definition of Solid Waste Rule. The size and complexity of the opinion and order under development for proposal of amendments is extreme. The draft order will embrace about 400 pages of the Illinois hazardous waste regulations, and the accompanying draft opinion will include over 200 pages of substantive discussion of those amendments. Although very near completion, the opinion and order are not quite ready for Board adoption of a proposal for public comment.

To accomplish a September 13, 2010 deadline, the Board must adhere to the following schedule of intermediate occurrences:

Due date:	September 13, 2010
Date of Board vote to propose amendments:	April 15, 2010
Submission for <i>Illinois Register</i> publication:	April 26, 2010
Probable <i>Illinois Register</i> publication date:	May 7, 2010
Probable End of 45-day public comment period:	June 21, 2010
Date of Board vote to adopt amendments:	August 5, 2010
End of 30-day hold period for USEPA review:	September 5, 2010
Probable filing and effective date:	September 13, 2010
Probable <i>Illinois Register</i> publication date:	September 25, 2010

This revised schedule includes an added period of up to four weeks to allow for submission and evaluation of voluminous and complex comments that may result from publication of the proposal for public comment.

The above schedule is a projection based on what the Board currently foresees occurring. If *Illinois Register* publication of Notices of Proposed Amendments occurs prior to May 7, 2010, the public comment period will begin and end sooner than the projected dates. Further, if no person requests an opportunity to file public comments later than 45 days after the date of *Illinois Register* publication, the Board would proceed to adopt amendments based on the proposal as

soon as possible. Such an earlier conclusion of the comment period or prompt action by the Board could result in completion of the amendments earlier than the date projected. Based on a Board vote to propose amendments on April 15, 2010, the earliest possible time that the Board could possibly vote to adopt the amendments would be July 1, 2010, which could allow completion of these rulemaking activities on August 2, 2010.

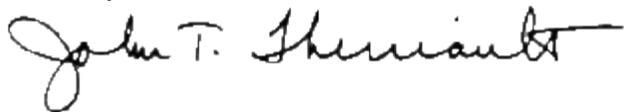
It is worthy of note that USEPA presently contemplates revising or withdrawing major segments of the amendments that underlie this docket. On May 27, 2009 (at 74 Fed. Reg. 25200), USEPA published a notice of public hearing on the October 30, 2008 amendments to the Definition of Solid Waste Rule. USEPA stated that it was entertaining further amendment of the Rule, USEPA solicited public comments on a number of aspects of the rule, and USEPA conducted a public hearing on the Rule on June 30, 2009. On December 9, 2009 (at 74 Fed. Reg. 64643), USEPA proposed withdrawal of the December 19, 2008 Emissions-Comparable Fuels Rule.

For the foregoing reasons, the Board finds that delay was unavoidable and an extension of the deadline for completion of these amendments is necessary until September 15, 2010. The Board hereby extends the deadline for completion of this rulemaking under Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2008)) until that date. The Board also directs staff to cause publication of a Notice of Public Information on Proposed Rules in the *Illinois Register*, based on this order, that sets forth reasons for delay and extends the due date for this proceeding.

Board staff is directed to promptly cause publication of a Notice of Public Information on Proposed Amendments in the *Illinois Register* that sets forth the foregoing as reasons for delay.

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 18, 2010, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board