

ILLINOIS POLLUTION CONTROL BOARD

June 17, 2010

IN THE MATTER OF:)	
SDWA UPDATE, USEPA AMENDMENTS)	R10-1
(January 1, 2009 through June 30, 2009))	(Identical-in-Substance
)	Rulemaking - Public Water Supply)
)	
)	
SDWA UPDATE, USEPA AMENDMENTS)	R10-17
(July 1, 2009 through December 31, 2009))	(Identical-in-Substance
)	Rulemaking - Public Water Supply)
)	(Consolidated)

Proposed Rule. Consolidation and Deadline Extension.

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

SUMMARY OF THIS ACTION

By this order, the Board consolidates two dockets and extends until November 15, 2010 the deadline by which the Board must complete rulemaking in these dockets.

Sections 7.2 and 17.5 of the Environmental Protection Act (Act) (415 ILCS 5/7.2 and 17.5 (2008)) provide for quick adoption by the Board of regulations that are identical in substance to federal regulations that the United States Environmental Protection Agency (USEPA) adopts to 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) (2006)). The USEPA National Primary Drinking Water Regulations (NPDWRs) implement Sections 1412(b), 1414(c), 1417(a), and 1445(a) of the federal SDWA (42 U.S.C. §§ 300g-1(a), 300g-3(c), 300g-6(a), and 300j-4(a) (2006)). The federal SDWA regulations are found at 40 C.F.R. 141 through 143. Section 17.5 also provides that Title VII of the Act and Section 5 of the Administrative Procedure Act (5 ILCS 100/5-35 and 5-40 (2008)) do not apply to the Board's adoption of identical-in-substance regulations.

The Board reserved docket R10-1 to accommodate amendments to the Illinois regulations that are "identical in substance" to drinking water regulations adopted by USEPA during the period January 1, 2009 through June 30, 2009. The Board reserved docket R10-17 to accommodate possible amendments to the Illinois regulations that are "identical in substance" to drinking water regulations adopted by USEPA during the period July 1, 2009 through December 31, 2009. USEPA amended the federal regulations in both of these periods.

The Board has been as yet unable to complete a rulemaking proposal for public comment based on the USEPA actions. By this order, the Board consolidates dockets R10-1 and R10-17.

There is significant concurrence in the subject matter of both dockets, and consolidation will allow the quickest and most efficient means to complete all of the amendments.

The Board finds that additional time is necessary to complete the amendments before June 29, 2010. This date, as required by the Act, is one-year after June 29, 2009, the date on which USEPA adopted the earliest amendments included in this proceeding. 415 ILCS 5/7.2(b) (2008). For this reason, the Board extends the rule completion deadline from June 29, 2010 until November 15, 2010 pursuant to Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2008)).

USEPA ACTIONS INCLUDED IN THESE DOCKETS

The R10-1 docket includes amendments that USEPA adopted in the period January 1, 2009 through June 30, 2009. On June 29, 2009, USEPA revised the federal drinking water regulations as follows:

June 29, 2009 (74 Fed. Reg. 30953) USEPA adopted a minor correction to the Stage 2 Disinfection and Disinfectant By-Products Rule (Stage 2 DDBPR) and made a minor editorial change in the drinking water analytical methods. USEPA corrected an inadvertent error when it omitted requirements applicable to ground water system suppliers that serve between 500 and 9,999 persons. This error resulted in these entities monitoring for either total trihalomethanes (TTHM) or haloacetic acids (HAA5) at two locations. USEPA had intended that these suppliers monitor both TTHM and HAA5 at two locations. USEPA further added new analytical methods approved by the expedited approval process, removed references to obsolete methods, and specified a new source for the incorporated reference “Technical Notes on Drinking Water Methods.”

The R10-17 docket includes amendments that USEPA adopted in the period July 1, 2009 through December 31, 2009. USEPA revised the federal drinking water regulations four times during this period, as follows:

August 3, 2009 (74 Fed. Reg. 38348) USEPA used its authority to use a summary procedure to approve alternative testing methods for use in demonstrating compliance with the drinking water standards. USEPA determined that six new methods were equivalent to methods that it had earlier approved by rulemaking. The new methods include a gas chromatography-mass spectrometry (GC-MS) method for volatile organic compounds in finished water, one laser and two light emitting diode nephelometric methods for turbidity in drinking water, an automated colorimetric method for nitrite in drinking water, and a GC-MS method for cyanide in drinking water.

October 19, 2009 (74 Fed. Reg. 53590) USEPA adopted National Primary Drinking Water Regulations applicable to aircraft public water systems. The new rules apply to aircraft that are public water systems and which board water for public consumption, regulating them as transient non-community water systems (TNCWSs). The rules include provisions for water quality monitoring and management, water-handling equipment maintenance, public notice, and reporting and recordkeeping requirements.

November 10, 2009 (74 Fed. Reg. 57908) USEPA used its authority to employ a summary procedure to approve alternative testing methods for use in demonstrating compliance with the drinking water standards. USEPA determined that 25 new methods were equivalent to methods that it had earlier approved by rulemaking. The new drinking water methods include an on-line method for chlorine; an ion chromatography method for bromate; another ion chromatography method for bromate, dalapon, and haloacetic acids; an ultraviolet light absorbance test for total organic carbon; an updated version of the minimal medium ONPG-MUG method for *E. coli*; 14 updated versions of methods for inorganic contaminants from the American Society for Testing and Materials (ASTM); a light-emitting diode method for turbidity in water; an electrochemical sensor method for total and free chlorine; and a modified Colitag method for total coliforms.

December 2, 2009 (74 Fed. Reg. 63069) USEPA made a minor correction in its November 10, 2009 summary approval of drinking water analytical methods.

CONSOLIDATION OF DOCKETS

The Board believes that consolidation of the amendments in dockets R10-1 and R10-17 will provide the quickest and most efficient way to complete all of the amendments. The most substantial set of amendments during both periods is the October 19, 2009 USEPA adoption of standards for aircraft public water systems. The second most substantial set is the June 29, 2009 USEPA corrections to the Stage 2 DDBPR and associated analytical methods. All of the other USEPA amendments (August 3, 2009, November 10, 2009, and December 2, 2009) are expedited approvals of analytical methods. Thus, consolidation of the two dockets essentially combines overlapping subject matters into one proceeding.

TIMETABLE FOR COMPLETION OF THIS RULEMAKING AND EXTENSION OF THE DEADLINE FOR FINAL ACTION

Under Section 7.2 of the Act (415 ILCS 5/7.2(b) (2008)), the Board must complete this rulemaking within one year of the date of the earliest set of federal amendments considered in this docket. USEPA adopted the earliest federal amendments that required Board attention on June 29, 2009. Accordingly, absent extension, the deadline for Board adoption of these amendments would be June 29, 2010.

Completing the amendments within the prescribed one-year period would have required the Board to have progressed to final adoption according to the following schedule, which has not been met:

Due date (statutory):	June 29, 2010
Date of Board vote to propose amendments:	April 1, 2010
Submission for <i>Illinois Register</i> publication:	April 12, 2010
Probable <i>Illinois Register</i> publication dates:	April 23, 2010
Estimated end of 45-day public comment period:	June 7, 2010

Likely date of Board vote to adopt amendments:	June 17, 2010
Probable filing and effective date:	June 28, 2010
Probable <i>Illinois Register</i> publication date:	July 9, 2010

Section 7.2(b), however, further provides a mechanism for the Board to extend the deadline for final action. Under that provision, the one-year period may be extended by adopting a Board order and publishing a notice of extension in the *Illinois Register*. The Board now uses this provision to extend the deadline. The Board states the reasons for delay as follows:

Delays in finalizing the voluminous hazardous waste amendments involved in RCRA Subtitle C Update, USEPA Amendments (July 1, 2008 through December 31, 2008), R09-16 and RCRA Subtitle C Update, USEPA Amendments (January 1, 2009 through June 30, 2009), R10-4 (consolidated) delayed development of a proposal for public comment in the present matter. This is the principal factor that makes an extension of the deadline for final action in this matter necessary. The Board today extends the deadline for completion of this proceeding.

The final Board action to adopt these amendments is now November 15, 2010. This extended deadline has a slight amount of extra time added to allow for any minor unforeseen delays in finalizing the amendments.

Considering the proposal of these amendments on this date, the Board presently projects the following will occur in the progress towards completing these amendments:

Extended Due date (by this order):	November 15, 2010
Date of Board vote to propose amendments:	August 3, 2010
Submission for <i>Illinois Register</i> publication:	August 16, 2010
Probable <i>Illinois Register</i> publication dates:	August 27, 2010
Estimated end of 45-day public comment period:	October 11, 2010
Likely date of Board vote to adopt amendments:	October 21, 2010
Probable filing and effective date:	November 1, 2010
Probable <i>Illinois Register</i> publication date:	November 12, 2010

The Board directs the Clerk and Board staff to submit a package to the Office of the Secretary of State before June 29, 2010, to gain *Illinois Register* publication of a Notice of Public Information Pursuant to 415 ILCS 5/7.2(b).

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 June 17, 2010, by a vote of 5-0.

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