

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
UIC UPDATE, USEPA AMENDMENTS) R11-14
(July 1, 2010 through December 31, 2010)) (Identical-in Substance
) Rulemaking – Land
)

NOTICE OF FILING

To:

Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
(Electronic filing)

Michael McCambridge, Hearing Officer
Illinois Pollution Control Board
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Virginia Yang
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Joint Committee on Administrative Rules
Wm. G. Stratton Office Building, Room 700
Springfield, Illinois 62706-4700500

Linda Dirksen Brand
Dept. of Commerce & Econ. Opportunity
Small Business Office
East Monroe Street
Springfield, Illinois 62701

Branch Chief
USEPA – Region 5
77 W. Jackson Blvd
Chicago, Illinois 60604

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: _____


Kyle Rominger
Deputy Counsel

Dated: December 8th, 2011
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
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ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
UIC UPDATE, USEPA AMENDMENTS) R11-14
(July 1, 2010 through December 31, 2010)) (Identical-in Substance
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COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOW COMES the Illinois Environmental Protection Agency (Illinois EPA) and submits the following comments on the Illinois Pollution Control Board's (Board's) proposed adoption of federal Class VI Underground Injection Control (UIC) rules as identical-in-substance amendments to the Illinois UIC rules.

I. The Board should not adopt the federal Class VI UIC rules as Board rules

a. Adoption of the Class VI rules is not required for Illinois UIC program primacy

When adopting the federal Class VI UIC rules, the USEPA explained that state UIC primary enforcement responsibility (primacy) for Class VI wells is independent from primacy for other classes of wells. 75 Fed. Reg. 77242. It noted that "[t]oday's final rule includes a new subparagraph § 145.1(i) that establishes [US]EPA's intention to allow for independent primacy for Class VI wells." Id. The independent nature of Class VI primacy is also reflected in 40 CFR § 145.21(h), which sets forth how states that do not seek full UIC primacy can obtain primacy for just Class VI wells. Because primacy for Class VI wells is independent from primacy for other classes of wells, Illinois is not required to obtain primacy for Class VI wells in order to maintain primacy for its current UIC program.

b. The USEPA is administering the Class VI UIC program in Illinois

When the USEPA adopted the Class VI rules on December 10, 2010, it laid out the process by which states could obtain primacy for Class VI wells. States had 270 days after the adoption of the federal rules to submit a complete primacy application. 76 Fed. Reg. 56983; 75 Fed. Reg. 77242. If a state did not submit a complete primacy application within that time, or the USEPA had not approved a state's Class VI program submission, the USEPA would "establish a Federal Class VI program in that state" and implement the Class VI requirements directly. 75 Fed. Reg. 77242. Illinois did not seek primacy for Class VI wells. In fact, no state sought primacy for Class VI wells. 76 Fed. Reg. 56983. Therefore, as of September 7, 2011, the USEPA is implementing the Class VI UIC program in all states, including Illinois. Id.

c. The federal Class VI rules are outside the scope of the Board's identical-in-substance rulemaking mandate

The Board proposes to adopt the federal Class VI rules as identical-in-substance rules pursuant to Sections 7.2 and 13(c) of the Environmental Protection Act (Act). Section 13(c) of the Act requires the Board to adopt, in accordance with Section 7.2 of the Act, identical-in-substance rules for purposes of implementing a State UIC program. Section 7.2 of the Act requires the Board to adopt identical-in substance regulations only if they are necessary and appropriate for the authorization of a federal program. As the Board noted in its Opinion for an Adopted Rule in recent Safe Drinking Water Act updates:

Section 7.2(a) limits the Board to adopting "such USEPA regulations as are necessary and appropriate for authorization of the program." Section 7.2(a) further prohibits adoption of "the equivalent of USEPA rules . . . that are appropriate only in USEPA-administered programs."

In the Matter of: SDWA Update, USEPA Amendments (January 1, 2009 through June 30, 2009);

SDWA Update, USEPA Amendments (July 1, 2009 through December 31, 2009); SDWA

Update, USEPA Amendments (January 1, 2010 through June 30, 2010), R10-1, R10-17, and R11-6 (consolidated) (Adopted Rule Opinion, December 2, 2010, p.9). As noted above, primacy for Class VI wells is independent of primacy for other classes of wells. Therefore, adoption of the federal Class VI rules is not necessary and appropriate for authorization of the current Illinois UIC program. In addition, as noted above, the USEPA is administering the Class VI program in Illinois, making the Class VI rules appropriate only in the USEPA administered program. As a result, the federal Class VI rules are outside the scope of the Board's identical-in-substance rulemaking mandate.

This situation is similar to the Aircraft Drinking Water Rule considered by the Board in the recent Safe Drinking Water Act updates referenced above. See Id. at 7-10. In that rulemaking, the Board decided not to adopt identical-in-substance Aircraft Drinking Water Rules because the rules were not required to obtain primacy for the drinking water program, the rule was being administered and implemented by the USEPA, and the rules were outside the scope of the Board's identical-in-substance rulemaking mandate. Id. For the reasons stated above, the Illinois EPA requests that the Board not adopt the federal Class VI rules as identical-in-substance amendments to the Illinois UIC rules. The Board only needs to amend its rules as necessary to acknowledge the USEPA's implementation of the Class VI program.

II. If the Board adopts Class VI rules, their effective date should be delayed

As noted above, the USEPA is implementing the Class VI program in all states as of September 7, 2011. 76 Fed. Reg. 56983. Therefore, the Class VI rules proposed by the Board are unnecessary and may lead to confusion over their intent and application. For example, Class VI Board rules might be interpreted as an independent State requirement to obtain a Class VI

permit from the Illinois EPA in addition to the Class VI permit required under the federal program implemented by the USEPA. To avoid confusion, if the Board adopts Class VI rules, the Illinois EPA requests that the Board provide the rules will not become effective unless and until the USEPA grants Class VI well primacy to Illinois.

III. 35 Ill. Adm. Code 807.105(a) needs to be amended to reflect the new State-federal division of the UIC program

The Board's solid waste rules contain a provision that prevents the double permitting of persons or facilities under both the State's solid waste program and other State programs, such as the UIC program or the hazardous waste program. The provision, which is found at 35 Ill. Adm. Code 807.105(a), states as follows:

Persons and facilities regulated pursuant to 35 Ill. Adm. Code 700 through 749 are not subject to the requirements of [Part 807] or of 35 Ill. Adm. Code 811 through 817. However, if such a facility also contains one or more units used solely for the disposal of solid wastes, as defined in 35 Ill. Adm. Code 810.103, such units are subject to requirements of this Part and 35 Ill. Adm. Code 811 through 817.

With respect to the UIC program, this provision currently references only the State UIC requirements that are contained the Board's rules. With the USEPA's administration of the Class VI portion of the UIC program, the UIC program is now split between the State and the USEPA. 35 Ill. Adm. Code 807.105(a) should be amended to reflect this new division of the UIC program. The Illinois EPA proposes that the Board amend 35 Ill. Adm. Code 807.105(a) similar to the following to acknowledge the new division of the UIC program:

Persons and facilities regulated pursuant to 35 Ill. Adm. Code 700 through 749, or pursuant to Underground Injection Control regulations administered by the USEPA, are not subject to the requirements of [Part 807] or of 35 Ill. Adm. Code 811 through 817. However, if such a facility also contains one or more units

used solely for the disposal of solid wastes, as defined in 35 Ill. Adm. Code 810.103, such units are subject to requirements of this Part and 35 Ill. Adm. Code 811 through 817.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY



Kyle Rominger
Deputy Counsel

DATED: December 8th, 2011
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(217) 782-5544

Electronic Filing - Received, Clerk's Office, 12/08/2011

******PC# 2******

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY upon the persons to whom they are directed, by placing a copy of each in an envelope addressed to:

Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
(Electronic filing)

Michael McCambridge, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

Matthew J. Dunn
Office of the Attorney General
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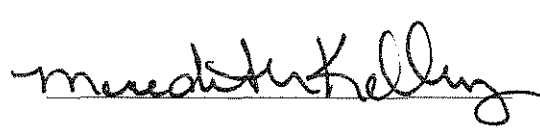
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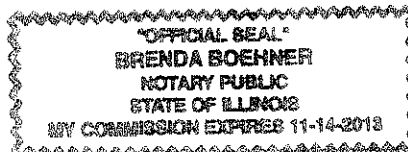
Branch Chief
USEPA – Region 5
77 W. Jackson Blvd
Chicago, Illinois 60604

and mailing them (First Class Mail) from Springfield, Illinois on December 8, 2011 with sufficient postage affixed as indicated above.



SUBSCRIBED AND SWORN TO BEFORE ME
This 8th day of December, 2011.

Brenda Boehner
Notary Public



Electronic Filing - Received, Clerk's Office, 12/08/2011

******PC# 2******