

Therriault, John

From: McCambridge, Michael
Sent: Thursday, May 19, 2016 4:50 PM
To: Eastvold, Jonathan C.
Cc: Therriault, John
Subject: RE: UST rule

PC# 1

John T.: Please enter this e-mail as a public comment in docket R16-16.

Johnathan,

Under the Ethics Act, I am constrained to enter any discussion of pending rules into the record of the proceeding. I believe that an e-mailed response will most efficiently and accurately accomplish that objective.

The present amendments are prompted by extensive amendments by USEPA to the federal UST rules. USEPA made substantive and minor, non-substantive revisions to all aspects of the UST rules. The USEPA amendments to the corrective action requirements were minor. The USEPA amendments to notification requirements were a bit more extensive, including addition of new notification requirements.

By legislative mandate as amended in 1991, the Board's rules should include only one aspect of the federal UST requirements: corrective action requirements. At that time, the revised scope of the UST identical-in-substance mandate included repeal of all segments of the Board's UST rules except for those pertaining to corrective action by identical-in-substance rulemaking in 1992.

The Board questioned in 1992 whether the notification requirement was intended by the General Assembly as a corrective action requirement because the General Assembly did not list the notification requirement in the list of subject matters outside the scope of corrective action. The Board did not repeal the notification requirement in 1992.

By the Board's opinion and order of April 21, 2016, the Board found that the Board erred in retaining the notification requirements in 1992. The Board has authority to correct identical-in-substance rules as needed using the identical-in-substance procedure where the corrections achieve the objective of ensuring that the Illinois rule is no less stringent than and not inconsistent with the corresponding federal provisions.

Were the Board to retain the notification requirement as it exists, the Board rule would be inconsistent with and less stringent than the corresponding USEPA notification requirement. Were the Board to amend the notification requirement to include the necessary elements of the revised USEPA notification requirements, the Board may be acting outside the scope of the current identical-in-substance mandate. Either action would be inconsistent with the current identical-in-substance mandate.

The Board has little option than to fulfill the current identical-in-substance mandate by removing the erroneous notification requirement. Only that removal will ensure that the Board has fulfilled the mandate.

If you need anything further from me, please ask.

From: Eastvold, Jonathan C. [<mailto:JonathanE@ilga.gov>]
Sent: Wednesday, May 18, 2016 11:39 AM
To: McCambridge, Michael
Subject: UST rule

At your convenience, could you please give me a call? Trying to figure out how repealing the UST Notification rules in response to a long-ago PA qualifies as an IIS rulemaking...

Thanks!

Jonathan

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