

ILLINOIS POLLUTION CONTROL BOARD  
September 18, 1997

IN THE MATTER OF: )  
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RCRA UPDATE, USEPA REGULATIONS ) R97-21  
(July 1, 1996, through December 31, 1996) ) (Identical-in-Substance Rules)

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IN THE MATTER OF: )  
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UIC UPDATE, USEPA REGULATIONS ) R98-3  
(January 1, 1997, through June 30, 1997) ) (Identical-in-Substance Rules)

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IN THE MATTER OF: )  
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RCRA UPDATE, USEPA REGULATIONS ) R98-5  
(January 1, 1997, through June 30, 1997) ) (Identical-in-Substance Rules)

ORDER OF THE BOARD (by K.M. Hennessey):

Pursuant to Section 13(c) and 22.4(a) of the Environmental Protection Act (Act), 415 ILCS 5/13(c) and 22.4(a) (1996), the Board is preparing to propose amendments to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6921-6925, hazardous waste (RCRA Subtitle C) and the Safe Drinking Water Act, 42 USC § 300h, (SDWA) underground injection control (UIC) regulations. By this order, the Board consolidates the three above-captioned identical-in-substance update dockets and sets forth reasons for delay as to the adoption of the RCRA Subtitle C amendments that will be included in the consolidated docket.

Section 22.4(a) provides for quick adoption of regulations that are “identical in substance” to federal regulations adopted by the U.S. Environmental Protection Agency (USEPA) to implement Sections 3001 through 3005 of RCRA and that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA), 5 ILCS 100/5-35 & 5-40 (1996), shall not apply. Section 13(c) similarly provides with respect to underground injection control regulations adopted by USEPA pursuant to Section 1421 of SDWA. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal RCRA Subtitle C regulations are found at 40 CFR 260 through 268, 270 through 271, 279, and, more recently, 273. The federal UIC regulations are found at 40 CFR 144, 146, and 148.

Section 7.2(a) of the Act requires the Board to complete its identical-in-substance rulemaking actions within one year after the date of the USEPA action on which they are based. Section 7.2(b) allows the Board to extend the deadline for adoption by publication of a notice of reason for delay in the *Illinois Register*. The Board hereby sets forth the reasons for delay for the purposes of such an extension with regard to the RCRA Subtitle C amendments of dockets R97-21 and R98-5.

FEDERAL ACTIONS CONSIDERED

Docket R97-21: July 1, 1996, through December 31, 1996, RCRA Subtitle C Amendments

USEPA amended the federal RCRA Subtitle C regulations several times during the period July 1, 1996, through December 31, 1996. These are summarized as follows:

#### Federal Action and Summary

##### 61 Fed. Reg. 34251 (July 1, 1996)

Revisions establishing that only those non-municipal non-hazardous waste disposal units that meet specific standards may receive conditionally exempt small quantity generator (CESQG) hazardous wastes. The Board will have to take corresponding action in the R97-21 RCRA Subtitle C update rulemaking.

##### 61 Fed. Reg. 36419 (July 10, 1996)

USEPA corrected typographic errors in certain of the April 8, 1996, Phase III land disposal restriction (LDR) amendments. This action was included in the consolidated R96-10/R97-3/R97-5 RCRA Subtitle C/UIC update docket, proposed for public comment on July 24, 1997, which will adopt the Phase III LDRs. No action will be necessary in the present R97-21 RCRA Subtitle C update docket.

##### 61 Fed. Reg. 40520 (August 5, 1996)

USEPA authorization additional segments of Illinois the Illinois RCRA Subtitle C hazardous waste program. Although no Board action will be required to amend the Illinois hazardous waste regulations, the Board will mention the authorization in the R97-21 RCRA Subtitle C update opinion discussing the federal actions for the period. The Board will add this authorization to the listing of federal approvals that appears in the RCRA Subtitle C opinions.

##### 61 Fed. Reg. 43927 (August 26, 1996)

USEPA adopted emergency amendments to the April 8, 1996, Phase III land disposal restrictions (LDR) treatment standards for carbamate wastes due to analytical problems with those wastes. This action was included in the consolidated R96-10/R97-3/R97-5 RCRA Subtitle C/UIC update docket, proposed for public comment on July 24, 1997, which will adopt the Phase III LDRs. No action will be necessary in the present R97-21 RCRA Subtitle C update docket.

##### 61 Fed. Reg. 56631 (November 4, 1996)

USEPA published a correction to the text of its rules in the Code of Federal Regulations (40 CFR 266.100(c)(3)(i)) due to the fact that segments were missing from the text. No Board action will be required on this revision in the present R97-21 RCRA Subtitle C update docket because the Board based its rules on the *Federal Register* and never incorporated the errors in the CFR.

##### 61 Fed. Reg. 59931 (November 25, 1996)

USEPA adopted final organic air emission standards for tanks, surface impoundments, and containers (the "Subpart CC" rules). These are the long-awaited rewrite of the Subpart CC rules. This action was included in the consolidated R96-10/R97-3/R97-5 RCRA Subtitle C/UIC update docket, proposed for public comment on July 24, 1997, which will adopt the Phase III LDRs. No action will be necessary in the present R97-21 RCRA Subtitle C update docket.

As indicated, the Board has taken or will not need to take action based on some of the federal RCRA Subtitle C amendments that occurred during the period of July 1, 1996, through December 31, 1996. The Board dealt with the federal actions of July 10, August 26, 1996, and November 25, 1996. No action will be required of the Board on the matters of August 5 and November 4, 1996. The Board has not yet taken action on the federal action of July 1, 1996, and this set of federal revisions will require Board action under docket R97-21.

Docket R98-5: January 1, 1997, through June 30, 1997, RCRA Subtitle C Amendments

USEPA Amended its RCRA Subtitle C regulations several more times during the six-month time period of docket R98-5. The federal actions during this period of January 1, 1997, through June 30, 1997, are summarized as follows:

Federal Action and Summary

62 Fed. Reg. 1678 (January 13, 1997)

Change in name and ownership of Envirite Corp. AS94-10 (Dec. 14, 1994) expressly superseded the former federally-derived delisting, and the Board repealed the former identical-in-substance delisting in consolidated UIC and RCRA Subtitle C docket R95-4/R95-6 (June 1, 1995). No further action will be necessary in the present R98-5 RCRA Subtitle C update docket.

62 Fed. Reg. 1834 (January 14, 1997)

Amendments to USEPA addresses. No similar action will be required in Illinois in the present R98-5 RCRA Subtitle C update docket.

62 Fed. Reg. 1991 (January 14, 1997)

Amendments to current national capacity variance for spent potliners from primary aluminum production for 6 months. This action was included in the consolidated R96-10/R97-3/R97-5 RCRA Subtitle C/UIC update docket, proposed for public comment on July 24, 1997, which will adopt the Phase III LDRs. No further action will be necessary in the present R98-5 RCRA Subtitle C update docket.

62 Fed. Reg. 6621 (February 12, 1997)

Amendments to identifying when conventional and chemical military munitions become hazardous waste under RCRA. Board action will be required to amend the corresponding Illinois rules in RCRA Subtitle C update docket R98-5.

62 Fed. Reg. 7502 (February 19, 1997)

Technical amendments to the tables in the Phase III land disposal restriction rule. This action was included in the consolidated R96-10/R97-3/R97-5 RCRA Subtitle C/UIC update docket, proposed for public comment on July 24, 1997, which will adopt the Phase III LDRs. No further action will be necessary in the present R98-5 RCRA Subtitle C update docket.

62 Fed. Reg. 25998 (May 12, 1997)

Phase IV land disposal restriction amendments for hazardous waste generated from wood processing operations. A very small segment of this action was included in the consolidated R96-10/R97-3/R97-5 RCRA Subtitle C/UIC update docket, proposed for public comment on July 24, 1997, which will adopt the Phase III LDRs. Further action will be necessary in the present R98-5 RCRA Subtitle C update docket to incorporate the major elements of the Phase

IV rules not included in that prior update docket.

62 Fed. Reg. 32452 (June 13, 1997)

Amendments to the hazardous waste testing and monitoring regulations. This action was included in the consolidated R96-10/R97-3/R97-5 RCRA Subtitle C/UIC update docket, proposed for public comment on July 24, 1997, which will adopt the Phase III LDRs. No further action will be necessary in the present R98-5 RCRA Subtitle C update docket.

62 Fed. Reg. 32974 (June 17, 1997)

Amendments to hazardous waste regulations regarding delisting of carbamate waste as hazardous under RCRA. This action was included in the consolidated R96-10/R97-3/R97-5 RCRA Subtitle C/UIC update docket, proposed for public comment on July 24, 1997, which will adopt the Phase III LDRs. No further action will be necessary in the present R98-5 RCRA Subtitle C update docket.

As with the previous docket timeframe, the Board will not need to act in docket R98-5 based on some of the January 1, 1997, through June 30, 1997, federal RCRA Subtitle C amendments. The Board dealt with the federal amendments of February 19 and June 13 and 17, 1997, in the prior update docket R96-10/R97-3/R97-5. No regulatory amendments will be necessary based on the USEPA actions of January 13 and 14, 1997. The Board will need to act with regard to the federal actions of February 12, May 12, and June 13, 1997, to amend the Illinois RCRA Subtitle C regulations to reflect the changes brought about by these USEPA actions.

Docket R98-3: January 1, 1997, through June 30, 1997, UIC Amendments

Federal Action and Summary

62 Fed. Reg. 1834 (January 14, 1997)

Amendments to USEPA addresses. No Board action will likely be required; see related RCRA Subtitle C action listing.

62 Fed. Reg. 25998 (May 12, 1997)

Phase IV land disposal restriction amendments for hazardous waste generated from wood processing operations. Board action will be required in the present UIC update docket R98-3 to amend the corresponding Illinois rules.

CONSOLIDATION OF DOCKETS

Because segments of the R97-21 and R98-5 RCRA Subtitle C amendments are closely related, the Board consolidates those dockets. Since the UIC amendments are also closely related to the R98-5 RCRA Subtitle C actions, the Board further consolidates the R98-3 amendments. All of these amendments affect 700-series regulations in Subtitle G, i.e. 35 Ill. Adm. Code 702 et seq. This consolidation will allow more rapid adoption of all the amendments than would proceeding separately, first with the presently-pending consolidated RCRA Subtitle C update docket R96-10/R97-3/R97-5, followed by the present RCRA Subtitle C update docket, R97-21, then followed afterwards with the UIC and RCRA Subtitle C update dockets, R98-3 and R98-5. The Board discussed this consolidation with staff of JCAR, and JCAR staff agrees that this is a reasonable way for the Board to proceed.

### REASONS FOR DELAY

Section 22.4(a) provides for quick adoption of regulations that are “identical in substance” to federal regulations adopted by USEPA to implement Sections 3001 through 3005 of the Resource Conservation and Recovery Act of 1976 (RCRA Subtitle C, 42 U.S.C. §§ 6921-6925). Section 7.2(a) of the Act requires the Board to complete its identical-in-substance rulemaking actions within one year after the date of the USEPA action on which they are based. Section 7.2(b) allows the Board to extend the deadline for adoption by publication of a notice of reason for delay in the *Illinois Register*. The Board hereby sets forth the reasons for delay for the purposes of such an extension with regard to the RCRA Subtitle C amendments of dockets R97-21 and R98-5.

On October 17, 1996, and May 1, 1997, the Board adopted an order in the prior update consolidated RCRA Subtitle C update docket that set forth the reasons for delay. It set forth those reasons as follows:

Due to the present and recent-past demands on Board resources and personnel, including those associated with completing the two prior updates, R95-4/R95-6 and R95-20, the Board has been unable to commence the amendments in dockets R96-10 and R97-5 in such a way that it has been able to complete rulemaking activities within one year. The amendments involved in dockets R95-4/R95-6 and R95-20 represented significant efforts on the part of the Board, given the magnitude of the amendments and competing priorities for the Board and its staff. Those amendments, the magnitude of the amendments involved in consolidated docket R96-10/R97-3/R97-5, and other competing priorities have resulted in unavoidable delay.

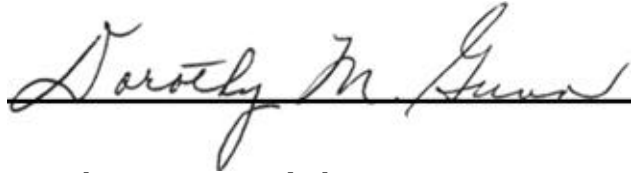
The Board now finds it necessary to set forth reasons for delay in completion of rulemaking in this matter. The present delay in the current update docket is the result of the delays experienced in the previous 500-page consolidated update docket. Due to the complexity of the hazardous waste regulations and the fact that many provisions that are under revision in the present docket are also involved in the prior update docket, it is impracticable to have two sets of amendments to these rules simultaneously pending.

At present, the Board anticipates assembling a proposal for public comment for consideration at one of our regularly-scheduled meetings in November or December 1997, shortly after adoption of the amendments involved in the prior consolidated update docket, R96-10/R97-3/R97-5. Allowing adequate time for publication of Notices of Proposed Amendments in the *Illinois Register*, for Board adoption at a regularly-scheduled meeting following the public comment period, and a 30-day moratorium on filing to allow USEPA comment on the adopted rules, the Board presently anticipates filing adopted amendments with the Secretary of State before May 1, 1998.

The Board will cause a copy of the above segment of this order to be published in the *Illinois Register*, as required by Section 7.2(b) of the Act.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted on the 18<sup>th</sup> day of September 1997, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a solid horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board