

ILLINOIS POLLUTION CONTROL BOARD

August 26, 2021

IN THE MATTER OF:)
SDWA UPDATE, USEPA AMENDMENTS) R21-10
(July 1, 2020 through December 31, 2020)) (Identical-in-Substance Rulemaking - Land)
)
SDWA UPDATE, USEPA AMENDMENTS) R22-2
(January 1, 2021 through June 30, 2021)) (Identical-in-Substance Rulemaking - Land)
) (Consolidated)

Reasons for Delay. Extension of Time.

ORDER OF THE BOARD (by C.M. Santos and J. Van Wie):

In reserved docket R21-10, the Board will amend the Illinois primary drinking water regulations that are identical-in-substance (IIS) to amendments adopted by the United States Environmental Protection Agency (USEPA) during the second half of 2020. The Board today finds that additional time is needed to complete the amendments and extends the due date for final Board action until March 1, 2022.

In reserved docket R22-2, the Board will amend the Illinois primary drinking water regulations that are identical-in-substance (IIS) to amendments adopted by the United States Environmental Protection Agency (USEPA) during the first half of 2021. The Board today consolidates dockets R21-10 and R22-2 for concurrent consideration.

Sections 7.2 and 17.5 of the Environmental Protection Act (Act) (415 ILCS 5/7.2 and 17.5 (2020)) require the Board to adopt primary drinking water regulations that are IIS to regulations that 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) (2019)). Section 22.4(a) requires the Board to use the IIS rulemaking procedure of Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2020)). Section 17.5 of the Act also provides that Title VII of the Act and Section 5 of the Illinois Administrative Procedure Act (APA) (5 ILCS 100/5-35 and 5-40 (2020)) do not apply to the Board's adoption of identical-in-substance regulations.

Section 7.2(b) of the Act requires the Board to complete action on amendments within one year of when USEPA adopted its rules. Section 7.2(b) further provides that the Board can extend the time to complete amendments upon a finding that the one-year period is insufficient to complete the rulemaking and specifically state the reasons for the extension. The Board must publish a notice of extension in the *Illinois Register*. 415 ILCS 5/22.4(b) (2020).

SUMMARY OF USEPA ACTIONS THAT MAY REQUIRE BOARD ACTION

The Board reserved docket R21-10 to accommodate USEPA actions relating to hazardous waste during the second half of 2020. During this time, USEPA took one drinking water-related action within the scope of the Board's mandate:

September 1, 2020 (85 Fed. Reg. 54235):

USEPA revised its rules requiring use of lead-free pipes, fittings, fixtures, and flux for plumbing providing drinking water.

The statutory due date for completing Board action on USEPA's amendments is September 1, 2021. Meeting this deadline would have required the Board to propose amendments no later than June 3, 2021, followed by publication of Notices of Proposed Amendments in the *Illinois Register* before June 25, 2021. This did not occur.

The Board reserved docket R22-2 to accommodate USEPA actions relating to hazardous waste during the first half of 2021. During this time, USEPA took six drinking water-related actions that will require Board attention:

January 15, 2021 (86 Fed. Reg. 4198):

USEPA revised its Lead and Copper Rule regulating the lead and copper content of drinking water.

March 12, 2021 (86 Fed. Reg. 14003):

USEPA delayed the effective date for the January 15, 2021 Lead and Copper Rule revisions.

May 19, 2021 (86 Fed. Reg. 27226):

USEPA updated the Clean Water Act analytical methods, which are incorporated by reference in the Illinois drinking water rules.

May 26, 2021 (86 Fed. Reg. 28277):

USEPA designated 17 new alternative equivalent methods for drinking water analyses.

June 2, 2021 (86 Fed. Reg. 29526):

USEPA corrected the May 26, 2021 alternative equivalent methods designations.

June 16, 2021 (86 Fed. Reg. 31939):

USEPA delayed the effective and compliance dates for the January 15, 2021 Lead and Copper Rule revisions.

Based on the earliest USEPA action during the timeframe, the statutory due date for completing Board action on USEPA's amendments is January 15, 2022. Meeting this deadline would require the Board to propose amendments no later than October 21, 2021, followed by publication of Notices of Proposed Amendments in the *Illinois Register* before November 21, 2021. This will not occur. The consolidation needed to complete Board action on all USEPA actions in both consolidated dockets will require slight delay.

EXTENSION OF DUE DATE AND REASONS FOR DELAY

The Board finds that additional time is needed to complete the amendments based on these USEPA actions. The Board extends the due date for final action until March 1, 2022.

The Board is reviewing the entire text of the Illinois hazardous waste regulations to make needed corrections and harmonize that text with current Board stylistic preferences and stylistic preferences that the Joint Committee on Administrative Rules (JCAR) consistently submits to the Board based on our proposed rules. Review of the Illinois primary drinking water regulations will follow review of the hazardous waste rules in the future. The process is complex and time-consuming. The large volume of text and effort needed for that review has caused substantial delay in all IIS rulemaking.

The Board staff member who has worked on IIS for over 30 years plans to retire within the next several months. The Board wishes to take advantage of his experience by completing review of the rules before he retires.

The Board believes the sacrifice of delay is justified by this experienced review of IIS rules and sharing with other Board staff. The Board wishes to fully avail itself of this opportunity before the Board staff member most experienced in IIS rulemaking and USEPA hazardous waste and drinking water regulations departs the Board.

The delay incurred with the current review of hazardous waste rules has delayed progress in the drinking water rules involved in R21-10 and R22-2.

The Board plans to complete the amendments in the consolidated docket R21-10/R22-2 SDWA updates on the following schedule:

Proposal adopted date:	November 18, 2021
Publication submission deadline:	November 28, 2021
<i>Illinois Register</i> publication date:	December 10, 2021
End of 45-day public comment period:	January 23, 2022
Adoption date:	February 3, 2022
Possible filing and effective date:	February 14, 2022
Possible <i>Illinois Register</i> publication date:	February 25, 2022

This schedule includes about two extra weeks to accommodate possible further delay.

ORDER

The Board directs the Clerk to submit a notice of this order for publication in the *Illinois Register*.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 26, 2021, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board