

ILLINOIS POLLUTION CONTROL BOARD  
May 5, 1994

IN THE MATTER OF: )  
 )  
PRETREATMENT UPDATE, ) R93-20  
USEPA REGULATIONS, ) (Identical in Substance  
(1-1-93 THROUGH 6-30-93) ) Rulemaking)

DISMISSAL ORDER.

ORDER OF THE BOARD (by J. Theodore Meyer):

Section 13.3 of the Environmental Protection Act (Act) (415 ILCS 5/13.3 (1992)) requires the Board to adopt regulations which are "identical in substance" to USEPA rules adopted to implement Sections 307 and 409 of the Clean Water Act. The term "identical in substance" is defined in Section 7.2 of the Act.

This docket was reserved to update the Illinois pretreatment rules (codified at 35 Ill. Adm. Code 307, 309, and 310) to correspond with federal amendments adopted in the period from January 1 through June 30, 1993. The only federal amendments adopted during this period are amendments to the federal sewage sludge management rules, adopted on February 19, 1993, at 58 Fed. Reg. 9248. Those February 19 rules amend the removal credits provisions, and include amendments to 40 CFR 403. The Illinois counterpart to Part 403 is 35 Ill. Adm. Code 310.<sup>1</sup>

On February 3, 1994, the Board issued an extension of time order, stating that this proceeding had been delayed while we considered our authority to adopt the February 19 federal amendments under the identical in substance provisions of the Act. That order was published in the Illinois Register on February 18, 1994, at 18 Ill. Reg. 2666. The Board subsequently received one public comment, from the Illinois Environmental Protection Agency (Agency). (PC #1.)

The February 19 amendments cite Sections 405(d) and (e) of the Clean Water Act as authority for those regulations. (58 Fed. Reg. 9248, 9250.) Section 13.3 of the Act allows the Board to adopt rules that are identical in substance to federal rules adopted pursuant to Sections 307(b), (c), (d), 402(b)(8) and (b)(9) of the Clean Water Act. (415 ILCS 5/13.3 (1992).) Thus, the February 19 federal amendments do not fall under the provisions allowing the Board to adopt rules identical in substance.

---

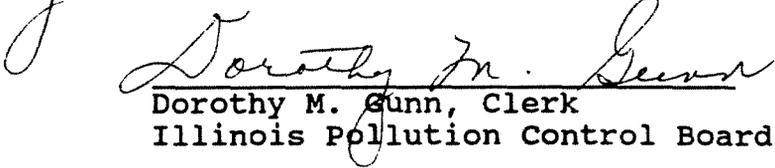
<sup>1</sup> The federal wastewater pretreatment regulations are found at 40 CFR 400 through 499.

The Agency, in its comments (PC #1), agrees that there is "questionable" authority for the Board to proceed identical in substance. The Agency recommends that the Board defer development of a proposal until at least November 1994. The Agency also contends that there would be no environmental improvement as a result of Board action at this time, and that adopting rules at this time would result in potential confusion in the regulated community. The Agency states that USEPA has indicated that the sewage sludge regulations are directly enforceable, so that generators and disposers are already obligated to observe those regulations. After a state has a sludge management program approved by USEPA, the sewage sludge management rules can be implemented through any of several permit programs, including NPDES. The Agency states that it is actively engaged in discussing (with USEPA) the necessary elements of a sludge management program for Illinois, with a decision on whether to apply expected in September 1995. Until that time, the Agency states that users and disposers are subject to the stricter of 40 CFR 503 and the existing state rules at 35 Ill. Adm. Code 309.208.

The Board hereby dismisses this docket. We find that it is clear, comparing the provisions of Section 13.3 of the Act (authorizing identical in substance rulemakings for rules pursuant to Sections 307 and 402 of the Clean Water Act) with the authority cited for the February 19 rules (Section 405 of the Clean Water Act), that the Board has no authority to proceed with an identical in substance rulemaking. Our dismissal is based solely on the issue of our authority to adopt the rules pursuant to the identical in substance provisions. Section 13.3 does not allow the Board to simply defer action on this docket, as the Agency suggests. Therefore, we dismiss this docket.<sup>2</sup>

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 5<sup>th</sup> day of May, 1994, by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

---

<sup>2</sup> If, in the future, Illinois applies for approval of a pretreatment or sludge management program, any deficiency caused by not adopting the February 19 rules can be cured by a corrective rulemaking. Any person can propose a rulemaking.