

ILLINOIS POLLUTION CONTROL BOARD
December 3, 1992

IN THE MATTER OF:)
)
SAFE DRINKING WATER ACT UPDATE) R92-12
(1-1-92 through 6-30-92)) (Identical in Substance Rules)

Proposed Rule Dismissal Order

ORDER OF THE BOARD (by J. Anderson):

Section 17.5 of the Environmental Protection Act (Act) requires the Board to adopt regulations which are "identical in substance" with USEPA drinking water rules adopted pursuant to Sections 1412(b), 1414(c), 1417(a), and 1445(a) of the Safe Drinking Water Act (P.L. 93-523), as amended (SDWA). The term "identical in substance" has been defined in Section 7.2 of the Act. Accordingly, the Board reserved this docket for USEPA amendments during the period from January 1 through June 30, 1992.

USEPA undertook the following rulemaking actions during the current update period:


57 Fed. Reg. 1850	January 15, 1992
57 Fed. Reg. 22178	May 27, 1992
57 Fed. Reg. 24744	June 10, 1992

The January 15 and June 10 actions affect the coliform rules. Since those amendments involved Sections already under revision in R91-3 and public comments requested their inclusion, the Board included those amendments in that docket. The May 27 action imposes an administrative stay on the effective date for three synthetic organic chemical contaminants added in the federal Phase IIB amendments, under revision in docket R92-3. For that reason, the Board will handle this action together with the Phase IIB rules in that docket. No other federal SDWA amendments occurred during this update period.

For the foregoing reason, the Board hereby dismisses this docket.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted by the Board on the 3rd day of December, 1992, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

0137-0725

The contingency plan regulations were adopted in R84-5, on June 8, 1984. The adopting Opinion appears at 59 PCB 319 (August 2, 1984). Until recently, the Board had not initiated an update rulemaking. Given its quite limited resources, the Board felt that it must give its highest priority attention to keeping up with the ongoing, voluminous "identical in substance" rulemakings implementing major federally mandated - and funded - programs. (The Board has handled, from rulewriting to adoption, some 26 rulemakings in the RCRA program alone.) We have also been aware that, due to limited funding in recent times, this was not a high activity program for the Agency.

The Board has been making every effort to allocate the resources to proceed with a contingency plan update. In addition to the Board's desire to respond to the "fast track" provisions in the Act, two events have occurred that make it necessary, if difficult, for the Board to allocate its resources to an update.


There have been voluminous amendments to the USEPA CERCLA regulations in 40 CFR 300 at 55 Fed. Reg. 8813, March 8, 1990. These amendments appear to effectively replace the old rules. Action on a major update such as this will be essential to a State "Superfund" program, even more so if the funding is reactivated.

Additionally, the Illinois appellate court has ruled that the Agency's rules regarding the State Remedial Action Priority List (SRAPL) is unacceptable, thus leaving no valid mechanism for prioritizing sites. (States Land Improvement Corp. v. IEPA, Fourth District, June 25, 1992; 596 N.E. 2d 1164.) The Agency's rules flowed from the Board's Contingency plan regulations. (See discussion in the R84-5 Opinion, at 5, 6). While States Land was on appeal to the Illinois Supreme Court, the Board delayed proceeding with the update because it was uncertain whether events might occur that were beyond the Board's control as regards its own regulations. However, this reason is no longer valid since the Supreme Court declined to review the case on October 7, 1992 ruling. Moreover, there is a potential for the appellate court's concerns about Agency's SRAPL rules to be addressed in the Board's update reflecting the federal program changes.

Pursuant to Section 7.2(b) of the Act, the Board will submit this order for publication in the Illinois Register as expeditiously as possible.

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 3rd day of December, 1992, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board