

ILLINOIS POLLUTION CONTROL BOARD
June 17, 1993

IN THE MATTER OF:)
)
RCRA UPDATE, USEPA REGULATIONS) R93-4
(7/1/92 - 12/31/92)) (Identical in Substance
) Rules)

ORDER OF THE BOARD (by J. Anderson):

This matter comes before the Board on a Joint Motion for Inclusion by the Illinois Environmental Protection Agency and Envirite Corporation. The motion asks the Board to include in this docket, or another, language incorporating by reference the recently published United States Environmental Protection Agency (USEPA) manual, Petitions to Delist Hazardous Wastes: A Guidance Manual Second Edition, March 1993. EPA 530-R-93-007 (Document number PB 93-169 365)(58 Fed. Reg. 19250, April 13, 1993). The first edition of the manual is currently incorporated by reference in the Board rules at 35 Ill. Adm. Code 720.111 and referenced in Section 720.122. This motion asks the Board to adopt the second edition of the delisting manual in R93-4.

For the reasons stated below the Agency's motion is granted. The Board today proposes to include the requested change in this docket at the time of it's adoption.

Petitioners state that Envirite intends to file a delisting petition with the Board in the near future. Pursuant to 35 Ill. Adm. Code 106.714, the Agency must file a response not later than thirty days after the filing to the petition. Petitioners assert that USEPA has advised them that the second edition of the delisting manual should be used in lieu of the first edition for delisting petitions. The parties are currently conducting discussions concerning the petition and are uncertain as to what edition of the manual to use for guidance.

Board telephone conversations with USEPA personnel indicate that USEPA recommends the use of the second edition of the manual. The Board adopted the proposed Order in R93-4 on May 27, 1993. The Order will soon appear in the Illinois Register, probably on June 25, 1993. At this time, it is too late to include the incorporation of the second edition of the manual into the proposed Order. However, the Board must at some point incorporate the second edition of the manual because the Board's delisting authority is predicated on the Board's "paralleling" USEPA in it's technical review procedures. (In The Matter Of: Keystone Steel and Wire Company, (February 28, 1991) AS 91-1.)

Incorporation by reference of the second edition would normally be adopted by the Board in the next RCRA update covering the time period of January 1, 1993 to June 30, 1993. However, it is consistent with past Board practice to adopt an amendment

0143-0375

outside the normal batch period in the interests of clarity and to avoid the adoption of an incorrect, contradictory or incomplete rule. In addition, it is consistent with past Board practice to adopt, in response to public comment, an amendment within a final Order and Opinion that did not appear in the proposed Order and Opinion, particularly where to do so will avoid confusion or hardship to the regulated community.

The Board hereby proposes to adopt the second edition of the manual with the adoption of the final Order and Opinion. The Board adopts this Order to notify the public and the regulated community of this proposed amendment. Any public comment concerning this matter should be made within the normal course of public comment in this docket.

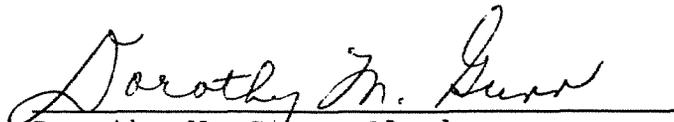
The incorporation of the second edition will not be final until such time as the Board formally incorporates the second edition into the Board's rules. The Board would accordingly defer decision in any delisting petition filed until adoption of the R93-4 rules. We do not believe that this will result in any delay in processing petitions, as we presently anticipate finalizing these rules in late summer or early fall of this year.

The Board will accept written public comment on this proposed amendment for a period of 45 days after the date of publication of R93-4 in the Illinois Register. Comments should reference Docket R93-4 and be addressed to:

Ms. Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board
 James R. Thompson Center, Suite 11-500
 100 W. Randolph St.
 Chicago, IL 60601

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 17th day of June, 1993, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board