

ILLINOIS POLLUTION CONTROL BOARD
December 20, 2001

IN THE MATTER OF:)
)
SDWA UPDATE, USEPA AMENDMENTS) R02-5
(January 1, 2001 through June 30, 2001;) (Identical-in-Substance Rulemaking -
Arsenic Rule)) Public Water Supply)

Proposed Rule. Reason for Delay Order.

ORDER OF THE BOARD (by R.C. Flemal):

This matter is before the Board on the December 5, 2001 request of the United States Environmental Protection Agency (USEPA) for an additional 30 days past December 10, 2001 in which to file public comments. The Board adopted a proposal for public comment in this matter on October 4, 2001. A Notice of Proposed Amendments for this proceeding appeared in the *Illinois Register* on October 26, 2001. The public comment began on the date of publication, and it ended after 45 days, on December 10, 2001. By this order, the Board grants USEPA the requested additional time to file its comments by extending the public comment period until January 9, 2002. The Board cannot accommodate USEPA's needs and still timely complete this rulemaking by the January 11, 2002 statutory due date. So, we further set forth reasons for delay and extend the time for Board adoption of these amendments until February 22, 2002.

Sections 7.2 and 17.5 of the Act (415 ILCS 5/7.2 and 17.5 (2000)) provide for quick adoption of regulations that are identical in substance to federal 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(b), 300g-3(c), 300g-6(a), and 300j-4(a) (2000)). Section 7.2(b) mandates that the Board must complete its rulemaking proceedings within one year after the earliest federal adoption date of the rules underlying the proceeding. However, Section 7.2(b) further provides that the one-year period for Board action may be extended if necessary to complete the proceeding. To extend the deadline for final Board action, the Board must make a finding based on the record of the proceeding that the one-year period is insufficient for completion of the rulemaking, and the Board must state reasons for the extension. Finally, Section 7.2(b) requires that the Board make this finding of necessity prior to the expiration of the one-year period, and we must publish a notice of extension in the *Illinois Register* as expeditiously as practicable.

The date of the federal amendments that determines the due date for the conclusion of Board action in this proceeding was January 11, 2001. The one-year period for completion for Board action on these amendments therefore ends on January 11, 2002, the due date for this docket.

The Board hereby extends the public comment period for an additional 30 days, as requested by USEPA, due to the unique circumstances surround this rule. USEPA adopted the federal arsenic rule on January 22, 2001. These are the principal federal amendments underlying

this proceeding. USEPA then delayed the effective date of this rule on March 23, 2001 and again on May 22, 2001 while it further studied the technical underpinnings of the rule. The federal effective date for this rule has remained February 22, 2002 since that time. This series of delays in the rule led many people, both inside and outside of USEPA, to believe that USEPA would ultimately withdraw the arsenic rule or further delay its effective date. However, USEPA announced by a press release on October 31, 2001 that it would not further delay the effectiveness of the rule. These facts have resulted in a delay in public review of these amendments.

While the Board places a high value on all public comments received in our rulemaking proceedings, those of the USEPA are often indispensable. So, we extend the public comment period in order to assure the benefits of receiving those comments.

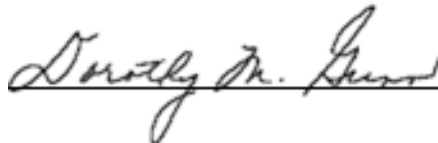
The Board hereby finds that the one-year period is insufficient to conclude our consideration of these amendments. The Board adopted a proposal for public comment in this matter on October 4, 2001. We submitted the necessary documents to the Office of the Secretary of State on October 8, 2001 to obtain publication of a Notice of Proposed Amendments in the *Illinois Register*, and that publication occurred on October 26, 2001. The public comment began on the date of publication, and it ended after 45 days, on December 10, 2001. The public comment period now ends after an additional 30 days, on January 9, 2002. This makes it impossible to conclude our actions in this matter by January 11, 2002, within the one-year period. As noted by USEPA in its December 3, 2001 request for additional time, the federal effective date of the principal federal amendments underlying this proceeding is February 22, 2002.

Extension of the time for completion of the Board's actions in this matter until February 22, 2002 is necessary for the foregoing reasons.

The Board will cause a Notice of Public Information on Proposed Rules setting forth the foregoing to be published in the *Illinois Register* as expeditiously as practicable.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do certify that the Board adopted the above order on December 20, 2001, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board