

ILLINOIS POLLUTION CONTROL BOARD
April 16, 1998

IN THE MATTER OF:)
) R97-21
RCRA UPDATE, USEPA REGULATIONS) (Identical-in-Substance Rulemaking -
(July 1, 1996 through December 31, 1996)) Land

IN THE MATTER OF:)
) R98-3
UIC UPDATE, USEPA REGULATIONS) (Identical-in-Substance Rulemaking -
(January 1, 1997 through June 30, 1997)) Land

IN THE MATTER OF:)
) R98-5
RCRA UPDATE, USEPA REGULATIONS) (Identical-in-Substance Rulemaking -
(January 1, 1997 through June 30, 1997)) Land

ORDER OF THE BOARD (by K.M. Hennessey):

Pursuant to Section 13(c) and 22.4(a) of the Environmental Protection Act (Act), 415 ILCS 5/13(c) and 22.4(a) (1996), the Board is preparing to propose two sets of regulatory amendments. One set is to the hazardous waste rules, implementing Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA Subtitle C), 42 U.S.C. §§ 6921-6925 (1996). The second set is to the underground injection control (UIC) regulations, implementing provisions of the Safe Drinking Water Act (SDWA), 42 USC § 300h (1996). By this order, the Board sets forth reasons for delay in proposing and adopting the amendments involved in this docket. By an earlier order dated September 18, 1997, the Board consolidated the three above-captioned identical-in-substance update dockets and set forth reasons for delay as to the adoption of the amendments that will be included in the consolidated docket.

Section 22.4(a) provides for quick adoption of regulations that are "identical in substance" to federal regulations adopted by the U.S. Environmental Protection Agency (USEPA) to implement Sections 3001 through 3005 of RCRA. Section 13(c) similarly provides with respect to underground injection control (UIC) regulations adopted by USEPA pursuant to Section 1421 of SDWA. Both Section 22.4(a) and 13(c) further provide that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA), 5 ILCS 100/5-35 & 5-40 (1996), do not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal RCRA Subtitle C regulations are found at 40 CFR 260 through 268, 270 through 271, 279, and, more recently, 273. The federal UIC regulations are found at 40 CFR 144, 146, and 148.

Section 7.2(a) of the Act requires the Board to complete its identical-in-substance rulemaking actions within one year after the date of the USEPA action on which they are based. Section 7.2(b) allows the Board to extend the deadline for adoption by publication of a notice of reason for delay in the *Illinois Register*. The Board hereby sets forth the reasons for delay for the purposes of such an extension with regard to the RCRA Subtitle C amendments

of dockets R97-21 and R98-5 and the UIC amendments of docket R98-3.

FEDERAL ACTIONS CONSIDERED

The Board set forth a detailed summary of the federal actions involved in this docket in its order of September 18, 1997. The Board directs attention to that summary for more detailed information. The following summarizes the *Federal Register* dates and citations on which the Board is presently preparing to take action:

July 1, 1996 (61 Fed. Reg. 34251)	Standards for disposal of conditionally exempt small quantity generator (CESQG) hazardous wastes
February 12, 1997 (62 Fed. Reg. 6621)	Conventional and chemical military munitions rule
May 12, 1997 (62 Fed. Reg. 25998)	Phase IV land disposal restrictions (LDRs) for hazardous waste generated from wood processing operations

REASONS FOR DELAY

The Board consolidated this docket R97-21/R98-3/R98-5 and set forth reasons for delay in its order of September 18, 1997. At that time, we anticipated filing adopted amendments with the Secretary of State on or before May 1, 1998. The Board hereby sets forth the reasons for delay for the purposes of such an extension with regard to the RCRA Subtitle C amendments of dockets R97-21 and R98-5 and the UIC amendments of R98-3.

The Board now finds it necessary to again set forth reasons for delay in completion of rulemaking in this matter. The continued delay in the current update docket is the result of a number of causes:

1. The Board experienced significant delays in the prior update docket, R96-10/R97-3/R97-5. That greater-than-650-page consolidated proceeding, itself delayed by prior proceedings, represented a significant effort on the part of the Board, taking nearly a year from initiation to completion. The Board adopted the R96-10/R97-3/R97-5 update by an order dated November 7, 1997, and filed the adopted amendments with the Secretary of State on December 16, 1997.
2. It is taking the Board a bit of time to incorporate a number of corrections of minor errors to the text of the R96-10/R97-3/R97-5 amendments recently requested by the Joint Committee on Administrative Rules (JCAR).
3. The Board recently adopted amendments to the hazardous waste regulations in docket R98-12, Amendments of 35 Ill. Adm. Code 703, 720, 721, 724, 725, 728, and 733 (Standards For Universal Waste Management) (April 2, 1998). In R98-12, the Board amended various sections of the hazardous waste regulations to include mercury-containing lamps as universal waste, as required by Section 22.23a of the Act, as added by Public Act 90-502, effective August 19, 1997. The Board must now alter the base text of the proposal to incorporate the amendments

made in the R98-12 docket.

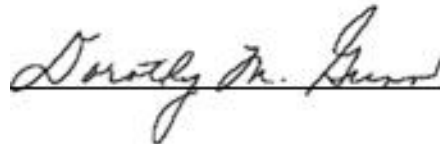
4. The anticipated size of this update proposal presently appears to be nearly 500 pages. Significant work will be required to finish assembling a proposal for public comment for Board consideration.
5. The federal Government Printing Office, which prints the *Federal Register* and the *Code of Federal Regulations*, does not require federal agencies to highlight the exact text of their amendments, as is required in Illinois by the Secretary of State for publication in the *Illinois Register*. Rather than omit unaffected segments of text from certain sections under amendment, USEPA simply prints the entire text of massive segments of the rules that it has amended. As a result, the Board must compare the text of the federal amendments with the prior version on a line-by-line basis, which proves very time-consuming, especially in a rulemaking of this volume.

At present, the Board anticipates assembling a proposal for public comment for consideration at one of our regularly-scheduled meetings in June, 1998. Allowing adequate time for publication of Notices of Proposed Amendments in the *Illinois Register*, for Board adoption at a regularly-scheduled meeting following the public comment period, and a 30-day moratorium on filing to allow USEPA comment on the adopted rules, the Board presently anticipates filing adopted amendments with the Secretary of State some time before November 15, 1998.

The Board will cause these reasons for delay to be published in the *Illinois Register*, as required by Section 7.2(b) of the Act.

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 16th day of April 1998 by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board