

ILLINOIS POLLUTION CONTROL BOARD
January 11, 1990

IN THE MATTER OF:)
)
UST UPDATE, USEPA REGULATIONS) R89-10
(10/27/88 THROUGH 6-30-89)) (Rulemaking)

ORDER OF THE BOARD (by J. Anderson):

The Board adopted a proposed Opinion and Order in this matter on November 15, 1989. The proposed regulations appeared at on January 5, 1990, at 14 Ill. Reg. 153.

Section 22.4(d) of the Environmental Protection Act (Act) requires the Board to adopt regulations which are "identical in substance" with USEPA underground storage tank (UST) rules adopted pursuant to the Resource Conservation and Recovery Act. The term "identical in substance has recently been defined in Section 7.2 of the Act. Section 7.2(b) requires the Board to adopt a rule within one year of adoption of the federal rule, unless the Board extends the time based on a finding that the time is insufficient and stating the reasons. The Board is entering this Order to extend the time.

As is detailed in the November 15, 1989 Opinion, the earliest Federal Registers were November 7 and December 21, 1988. As also noted in the Opinion, the first of these may not result in any change to the Board rules. The comment period will end on approximately February 12, 1990. The next Board meeting will be February 22, 1990. The Board anticipates adopting these rules at that time.

On September 23 and October 26, 1988, USEPA adopted two large sets of rules which completely revised the UST rules in 40 CFR 280. The Board followed USEPA's lead and adopted these rules in two packages, in R88-27 and R89-4, rather than combining them into a normal update batch for the period July 1 through December 31, 1988. By the time R89-4 was completed, it was time to start the update for the period January 1, 1989 through June 30, 1989. This is why the update period is longer than the usual six months.

Inspection of the Federal Registers involved in this update discloses that the USEPA amendments are corrections to the rules adopted in R88-27 and R89-4. These corrections were made at a time when those Dockets were still pending. The corrections could have been adopted in those Dockets, had the corrections come to the Board's attention in time. The error was discovered

on November 3, 1989, during drafting of the Order in this matter. Section 7.2(b) gives the Board one year to correct such errors, from the date of discovery. The Board should be able to adopt these rules by November 3, 1990. However, the Board is entering this Order to avoid any future confusion.

As noted in the Order entered in R89-1 on August 31, 1989, the number of federally-driven programs requiring adoption of large blocks of rules has expanded from two (RCRA and UIC) to five (including Pretreatment, UST and SDWA). In the last year the Board has devoted substantial resources to initial adoption of two large new programs (UST and SDWA), and to an unusually large RCRA update (R89-1). The Board has recently received funding for expansion of staff to manage these large rulemakings. The Board believes that it will be able to return to schedule as its expanded staff gains experience.

The Board directs that these reasons be published in the Illinois Register pursuant to Section 7.2 of the Act.

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 _____ day of _____, 1990, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board