

ILLINOIS POLLUTION CONTROL BOARD

October 15, 2009

IN THE MATTER OF:	)	
RCRA SUBTITLE C UPDATE, USEPA	)	R09-16
AMENDMENTS (July 1, 2008 through	)	(Identical-in-Substance
December 31, 2008)	)	Rulemaking - Land)
_____	)	
	)	
RCRA SUBTITLE C UPDATE, USEPA	)	R10-4
REGULATIONS (January 1, 2009 through	)	(Identical-in-Substance Rulemaking -
June 30, 2009)	)	Land)
	)	(Consolidated)

Proposed Rule. Consolidation Order. Deadline Extension Order.

ORDER OF THE BOARD (by G.T. Girard):

This matter is before the Board on the Board's own motion. The Board finds that consolidation of the federal hazardous waste amendments that occurred during the period January 1, 2009 through June 30, 2009, with those that occurred during the period July 1, 2008 through December 31, 2008 is desirable. The Board further finds that extension of the deadline for filing of amendments in this matter until April 15, 2010 is necessary. By this order the Board extends the deadline for adoption of the pending amendments and sets forth the reasons for delay.

**CONSOLIDATION OF DOCKETS**

The Board finds that consolidation of the federal hazardous waste amendments that occurred during the period July 1, 2008 through December 31, 2008, within the nominal timeframe of docket R09-16, together with those that occurred during the period January 1, 2009 through June 30, 2009, within the nominal timeframe of docket R10-4, is desirable. This will allow the Board to more promptly deal with the USEPA amendments of June 25, 2009. While the June 25, 2009 amendments are minor in nature, and they would not involve the generation of a great quantity of paper if taken alone, their consolidation together with the R09-16 amendments will obviate multiple mailings, conserving Board resources and mailing expenses.

A brief outline of the nature of the amendments included in the two dockets, R09-16 and R10-4, follows:

**Docket R09-16: July 1, 2008 through December 31, 2008 Amendments**

USEPA amended the federal hazardous waste regulations three times during the period July 1, 2008 through December 31, 2008, as is summarized below:

**October 30, 2008 (73 Fed. Reg. 64668): Amended Definition of Solid Waste to Exclude Reclaimed Secondary Hazardous Materials.** USEPA amended the definition of “solid waste” to exclude certain “hazardous secondary materials” (HSMs) from regulation as hazardous waste. The amendments defined HSM as material that undergoes reclamation but which would constitute hazardous waste if discarded. The amendments added four self-implementing exclusions from the definition of solid waste. The amendments also added a new procedure for obtaining exclusion by an administrative “non-waste” determination. Included in the federal amendments are extensive financial assurance requirements that apply to domestic facilities that manage HSMs that are reclaimed by an entity other than the generator.

**December 1, 2008 (73 Fed. Reg. 64668): Alternative Standards for Academic Laboratories.** USEPA adopted a set of optional alternative hazardous waste generator requirements applicable to college and university laboratories and other facilities affiliated with colleges and universities. The facilities to which the standards would apply are designated “eligible academic entities.” An eligible academic entity may opt to comply with the alternative standards in lieu of the generally applicable large-quantity waste generator, small-quantity waste generator, or conditionally exempt small-quantity generator waste regulations. The alternative standards designate laboratory waste as “unwanted material,” and they include provisions relating to waste labeling and accumulation, worker training, hazardous waste determination, and removal from the laboratory. The alternative rules require annual laboratory cleanouts and the assembly of a written “laboratory management plan” that describes the procedures the laboratory will use for managing its waste.

**December 19, 2008 (73 Fed. Reg. 77954): Exclusion of Emission-Comparable Fuel from the Definition of Solid Waste.** USEPA added an exclusion for emission-comparable fuel (ECF) to its existing excluded fuels rule, which previously excluded only “comparable fuels” and “synthesis gas fuels” from the definition of solid waste. USEPA further amended the comparable fuels exclusion to accommodate the addition of the exclusion for ECF. “Comparable fuels” are secondary materials that have fuel value and which contain hazardous constituents at levels comparable to fuel oil. These are excluded from the definition of solid waste. The new exclusion of ECF overlaps and extends the existing comparable fuels exclusion. ECF is an HSM that results in emissions comparable to the burning of fuel oil. ECF must fulfill all the requirements for a comparable fuel, except for the standards for maximum oxygenates and hydrocarbons contents limits. Thus, use of ECF is comparable to use of fuel oil, from the standpoint of emissions, but oxygenate and hydrocarbons contents may be higher in ECF than those found in fuel oil.

#### **Docket R10-4: January 1, 2009 through June 30, 2009 Amendments**

USEPA amended the federal hazardous waste regulations once during the period January 1, 2009 through June 30, 2009, as is summarized below:

**June 25, 2009 (74 Fed. Reg. 30228): Changed USEPA Office Name.** USEPA amended various segments of its regulations to reflect reorganization within its various offices.

Among the amendments were revisions to hazardous waste rules. USEPA changed “Office of Solid Waste” to the new name, “Office of Resource Conservation and Recovery.”

### **REASONS FOR DELAY AND EXTENSION OF DEADLINE**

The due date for this proceeding was based on the earliest federal amendments included in this rulemaking, the October 30, 2008 amendments to the Definition of Solid Waste Rule. Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2008)). The due date for filing the completed amendments is one year from that date, so the Board must file the amendments with the Office of the Secretary of State before October 30, 2009. To accomplish this deadline, the Board would have had to adhere to the following schedule of intermediate occurrences:

Due date:	October 30, 2009
Date of Board vote to propose amendments:	June 18, 2009
Submission for <i>Illinois Register</i> publication:	June 29, 2009
Probable <i>Illinois Register</i> publication date:	July 10, 2009
Probable End of 45-day public comment period:	August 24, 2009
Date of Board vote to adopt amendments:	September 17, 2009
End of 30-day hold period for USEPA review:	October 17, 2009
Probable filing and effective date:	October 26, 2009
Probable <i>Illinois Register</i> publication date:	November 9, 2009

The Board has been developing a proposal for public comment in this matter, and more time than the Board estimated is necessary to complete that proposal. Due to the volume and complexity of the amendments involved in this consolidated update docket, the Board has not yet completed the proposal. The October 30, 2008 amendments to the Definition of Solid Waste Rule involved incorporation of a new administrative determination and four new self-implementing exclusions from the definition of solid waste into the Illinois regulations. This has required extensive examination of the existing rules, as well as the new provisions and the addition of a voluminous new body of financial assurance requirements to the regulations. Also, the December 19, 2008 amendments to the excluded fuels rule involved incorporation of what is essentially an extensive new provision to the regulations. Similarly, the December 1, 2008 adoption of alternative generator requirements for eligible academic entities adds a new subpart to the hazardous waste generator standards.

Further, delay will allow the Board to consolidate the R09-16 and R10-4 dockets, in order to more promptly deal with the USEPA amendments of June 25, 2009 that will be the subject of docket R10-4.

For the foregoing reasons, the Board finds that delay was unavoidable and an extension of the deadline for completion of these amendments is necessary until April 15, 2010. To fulfill this deadline, the Board must adhere to the following schedule of intermediate occurrences:

Due date:	January 15, 2009
Date of Board vote to propose amendments:	December 3, 2009
Submission for <i>Illinois Register</i> publication:	December 15, 2009
Probable <i>Illinois Register</i> publication date:	December 26, 2009
Probable End of 45-day public comment period:	February 9, 2010
Date of Board vote to adopt amendments:	February 18, 2010
End of 30-day hold period for USEPA review:	<b>March 18, 2010</b>
Probable filing and effective date:	March 23, 2010
Probable <i>Illinois Register</i> publication date:	April 3, 2010


At present, the Board plans to vote to adopt amendments based on the proposal for public comment at the regularly scheduled Board meeting of November 19, 2009 or December 3, 2009. After receiving public comments on the amendments, the earliest date for Board adoption of the amendments will be February 4, 2010 or February 18, 2010. After holding the amendments for 30 days after adoption to allow USEPA to review them before they are filed, the earliest date for filing the amendments with the Office of the Secretary of State will be March 9, 2010 or March 23, 2010. However, to accommodate the unanticipated possibility for further delay, the Board will extend the deadline for final action until April 15, 2010, which would allow the Board to vote to amend the amendments as late as the regularly-scheduled meeting of March 4, 2010.

The Board hereby extends the deadline for completion of this rulemaking under Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2008)). The Board also directs staff to cause publication of a Notice of Public Information on Proposed Rules in the *Illinois Register*, based on this order, that sets forth reasons for delay and extends the due date for this proceeding.

Board staff is directed to promptly cause publication of a Notice of Public Information on Proposed Amendments in the *Illinois Register* that sets forth the foregoing as reasons for delay.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 15, 2009, by a vote of 5-0.




---

John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board