

ILLINOIS POLLUTION CONTROL BOARD
September 17, 1987

IN THE MATTER OF:)
)
UIC UPDATE, USEPA REGULATIONS) R87-29
(1-1-87 THROUGH 6-30-87))

PROPOSAL FOR PUBLIC COMMENT

PROPOSED OPINION OF THE BOARD (by J. Anderson):

By a separate Order, pursuant to Section 13(c) of the Environmental Protection Act (Act), the Board is proposing to amend the UIC regulations. The Board invites public comment for 45 days after publication of the proposal in the Illinois Register.

On August 20, 1987 the Board opened this docket for the purpose of updating the UIC rules to agree with recent USEPA amendments.

Section 13 of the Act governs adoption of regulations establishing the UIC program in Illinois. Section 13(c) provides for quick adoption of regulations which are "identical in substance" to federal regulations; Section 13(c) provides that Title VII of the Act and Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the Administrative Procedure Act, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal UIC regulations are found at 40 CFR 144 and 146. This rulemaking updates Illinois' UIC rules to correspond with federal amendments during the period January 1 through June 30, 1987. The Federal Register utilized is as follows:

52 Fed. Reg. 20671

June 2, 1987

The Board has shifted from a quarterly to a semiannual updating of the UIC rules in anticipation of the Governor signing H.B. 1867. The Board will usually batch USEPA amendments at six month intervals, and seek to finalize the adoption process prior to the end of the next six month period. This should simplify the process, since it will no longer be necessary to attempt to propose a quarterly update before the prior quarter is done, which often happens.

HISTORY OF RCRA and UIC ADOPTION

The Illinois RCRA and UIC (Underground Injection Control) rules, together with more stringent state rules particularly applicable to hazardous waste, include the following:

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| 702 | RCRA and UIC Permit Programs |
| 703 | RCRA Permit Program |
| 704 | UIC Permit Program |
| 705 | Procedures for Permit Issuance |
| 709 | Wastestream Authorizations |
| 720 | General |
| 721 | Identification and Listing |
| 722 | Generator Standards |
| 723 | Transporter Standards |
| 724 | Final TSD Standards |
| 725 | Interim Status TSD Standards |
| 726 | Specific Wastes and Management Facilities |
| 728 | USEPA Land Disposal Restrictions (Proposed) |
| 729 | Landfills: Prohibited Wastes |
| 730 | UIC Operating Requirements |
| 731 | Underground Storage Tanks |

Special procedures for RCRA cases are included in Parts 102, 103, 104 and 106.

Adoption of these rules has proceeded in several stages. The Phase I RCRA rules were adopted and amended as follows:

R81-22 45 PCB 317, February 4, 1982, 6 Ill. Reg. 4828, April 23, 1982.

R82-18 51 PCB 31, January 13, 1983, 7 Ill. Reg. 2518, March 4, 1983.

Illinois received Phase I interim authorization on May 17, 1982 (47 Fed. Reg. 21043).

The UIC rules were adopted as follows:

R81-32 47 PCB 93, May 13, 1982; October 15, 1982, 6 Ill. Reg. 12479.

The UIC rules were amended in R82-18, which is referenced above. The UIC rules were also amended in R83-39:

R83-39 55 PCB 319, December 15, 1983; 7 Ill. Reg. 17338, December 20, 1983.

Illinois received UIC authorization February 1, 1984. The Board has updated the UIC rules:

R85-23 June 19, 1986; 10 Ill. Reg. 13274, August 8, 1986.

R86-27 Dismissed April 16, 1987 (No USEPA amendments through 12/31/86).

R87-29 This Docket (1/1/87 through 6/31/87)

The Phase II RCRA rules included adoption of Parts 703 and 724, which established the permit program and final TSD standards. The Phase II rules were adopted and amended as follows:

- R82-19 53 PCB 131, July 26, 1983, 7 Ill. Reg. 13999, October 28, 1983.
- R83-24 55 PCB 31, December 15, 1983, 8 Ill. Reg. 200, January 6, 1984.

On September 6, 1984, the Third District Appellate Court upheld the Board's actions in adopting R82-19 and R83-24. (Commonwealth Edison et al. v. IPCB, 127 Ill. App. 3d 446; 468 NE 2d 1339 (Third Dist. 1984).)

The Board updated the RCRA rules to correspond with USEPA amendments in several dockets. The period of the USEPA rules covered by the update is indicated in parentheses:

- R84-9 64 PCB 427, June 13, 1985; 9 Ill. Reg. 11964, effective July 24, 1985. (through 4/24/84)
- R85-22 67 PCB 175, 479, December 20, 1985 and January 9, 1986; 10 Ill. Reg. 968, effective January 2, 1986. (4/25/84 -- 6/30/85)
- R86-1 July 11, 1986; 10 Ill. Reg. 13998, August 22, 1986. (7/1/85 -- 1/31/86)
- R86-19 October 23, 1986; 10 Ill. Reg. 20630, December 12, 1986. (2/1/86 -- 3/31/86)
- R86-28 February 5 and March 5, 1987; 11 Ill. Reg. 6017, April 3, 1987. Correction April 16, 1987; 11 Ill. Reg. 8684, May 1, 1987. (4/1/86 -- 6/30/86)
- R86-46 July 16, 1987; 11 Ill. Reg. 13435, August 14, 1987. (7/1/86 -- 9/30/86)
- R87-5 Proposed July 16, 1987; 11 Ill. Reg. 13199, August 14, 1987. (10/1/86 -- 12/31/86)
- R87-26 Proposed September 4, 1987. (1/1/87 -- 6/31/87)
- R87-32 Correction to R86-1, September 4, 1987.

Illinois received final authorization for the RCRA program effective January 31, 1986.

The Board added to the federal listings of hazardous waste by listing dioxins pursuant to Section 22.4(d) of the Act:

R84-34 61 PCB 247, November 21, 1984; 8 Ill. Reg. 24562, effective December 11, 1984.

This was effectively repealed by R85-22, which included adoption of USEPA's dioxin listings. The Board has adopted a USEPA delisting at the request of Amoco:

R85-2 April 24, 1986; 10 Ill. Reg. 8112, effective May 2, 1986.

The Board has procedures to be followed in cases before it involving the RCRA rules:

R84-10 62 PCB 87, 349, December 20, 1984 and January 10, 1985; 9 Ill. Reg. 1383, effective January 16, 1985.

The Board also adopted in Part 106 special procedures to be followed in certain determinations. Part 106 was adopted in R85-22, and amended in R86-46.

The Board has also adopted requirements limiting and restricting the landfilling of liquid hazardous waste, hazardous wastes containing halogenated compounds and hazardous wastes generally:

R81-25 60 PCB 381, October 25, 1984; 8 Ill. Reg. 24124, December 4, 1984;

R83-28 February 26, 1986; 10 Ill. Reg. 4875, effective March 7, 1986.

R86-9 Emergency rules adopted October 23, 1986; 10 Ill. Reg. 19787, effective November 5, 1986.

The Board's action in adopting emergency rules in R86-9 was reversed (CBE and IEPA v. IPCB et al., First District, January 26, 1987). Permanent rules are presently the subject of hearings.

DETAILED DISCUSSION

The single USEPA amendment, in the June 2, 1987 Federal Register, contains only technical corrections resulting from amendments to the Safe Drinking Water Act. As it turns out, most of the amended provisions have no Illinois counterpart, affecting USEPA administered programs only. Most of the amendments proposed below are technical corrections to the Board rules, resulting from such things as changes to the APA and codification requirements.

Section 702.104

For the reasons discussed below in connection with the definitions of "radioactive waste" and "total dissolved solids" the Board is proposing to add references to 10 CFR 20 and 40 CFR 136 to the table of incorporations by reference. Also, for the reasons discussed in Section 704.122, the Board is adding an incorporation of the primary drinking water standards of 40 CFR 142. This Section is proposed for amendment in R87-26. Some of the changes indicated may actually be made in that Docket prior to action on this Docket.

Section 702.110

USEPA has amended the definition of "SDWA" (Safe Drinking Water Act) to include recent amendments. The Board has updated its reference. The Board has also made a number of editorial corrections to the definitions table.

This list of definitions was originally adopted based on the consolidated permit rules of old 40 CFR 122. At that time it was difficult to tell which definitions applied to the RCRA and UIC programs, and which applied to air and water programs. The Board has reviewed the definition set and proposed to delete definitions with no obvious function in these programs. The Board solicits comment on these proposed deletions.

The Board has deleted the specific reference to future revisions of the application form from the definition of "application". The definition clearly encompasses forms promulgated in the future by the Agency pursuant to Section 39(a) of the Act even without specifically stating.

In "approved program" the Board has updated a reference to the deconsolidated RCRA rules on program approval. The Board has also added the equivalent UIC reference from 40 CFR 144.3. The Board solicits comment as to whether this definition is necessary in the State program.

New requirements on incorporations by reference have been added to the Administrative Procedure Act. This has caused the Board to look closely to determine whether references to USEPA rules are incorporations by reference which would require compliance with new procedures. The reference in "approved program" is not an incorporation by reference. Rather, the definition is referencing USEPA's decision in approving state programs. The reference to the federal rules and statute serves to identify the USEPA decision being referenced. By way of contrast, an incorporation by reference would be a rule which provided that the Agency or Board decided whether programs were "approved", utilizing the USEPA standards for program approval.

The APA prohibits incorporation by reference of future amendments ("forward incorporations"). In the definition of

"approved program" the Board intends that state programs which USEPA might approve in the future based on amended rules would be "approved programs." The point is that USEPA approved a RCRA or UIC program based on its current rules, as opposed to approving, for example, a water quality plan under Section 302 of the Clean Water Act.

The Board has added a date to all references to federal rules and statutes. Unless these are incorporations by reference, they are not intended to cut off future amendments to the rules. Rather, the point is to specify a certain edition so that, in the future, a person can refer to a definite rule or statute and track it to the present. This should avoid the problems which have risen in this Part from the USEPA renumbering of 40 CFR 122 and 123.

The Board has reviewed all of the definitions below and determined that only three include an incorporation by reference. In those definitions the Board has added a citation to the incorporations by reference Section which contains the information required by the APA.

The Board has modified the definition of "disposal" to more closely correspond with the definition in 40 CFR 270.2.

The definition of "draft permit" has been modified to remove the phrase "revoke and reissue." As was discussed in the Board's Opinion in R85-23 and R86-1, permit revocation is a Board function, which proceeds without a draft permit. The Board has utilized the term "reissuance" to describe the process by which the Agency cancels an old permit and replaces it with a new one. The Board has proposed to amend this definition for consistency.

The Board has modified the indentation in the definition of "existing HWM facility" to more closely follow the USEPA rule. Under the codification rules the Board is not allowed to use subsection labels in a definition, but must rely entirely on level of indentation to express subordination. Placing the word "either" in a separate paragraph seems to make the definition more closely follow the federal intent.

The Board has added the January 31, 1986 date to the definition of "final authorization." The Board solicits comment as to whether this is correct, especially considering the ambiguity surrounding authorization of program portions mandated by HSWA.

The Board has proposed to delete the reference to 35 Ill. Adm. Code 809 from the definition of "manifest." As the term is used in the 700's series, the term seems to be restricted to the Part 722 manifest. Section 700.303 provides that compliance with the Part 722 manifest requirement satisfies the Part 809 requirement.

The Board has proposed to delete the federal references from the definition of "NPDES." Instead the Board will reference only the derivative State program pursuant to Section 12(f) of the Act and 35 Ill. Adm. Code 309. This eliminates several federal references which could be construed as incorporations by reference.

The Board has also proposed to replace the definition of "POTW" with a reference to the definition in the pretreatment rules proposed in R86-44, which presumably will be in place by the time the Board takes final action on this proposal. The Board has crafted a better State definition which is central to that Part.

The definition of "radioactive waste" appears to be a true incorporation by reference of the NRC standards of 10 CFR 20. The Board has added a reference to Section 702.104, and amended that Section as discussed above.

The Board solicits comment as to whether there is a better State reference for the "Section 404 program."

The definition of "SIC Code" appears to be a true incorporation by reference. The Board has added a reference to 35 Ill. Adm. Code 720.111, in which the full APA incorporation by reference already exists.

The definition of "total dissolved solids" includes a reference to the USEPA test methods of 40 CFR 136. This appears to be a true incorporation by reference. The Board has added a reference to Section 702.104, and amended that Section as discussed above.

The Board has proposed to delete the federal references from the definition of "UIC." As used in the Board rules, this term seems to simply mean the Illinois underground injection control program, which has already been approved.

The Board has corrected a typographical error in the definition of "USDW" (Underground Source of Drinking Water). The reference should be to water with more than 10,000 mg/L total dissolved solids (rather than "solvents"). The Board has also proposed to modify the levels of indentation in this definition along the same lines as is discussed above in connection with "existing HWM facility."

The Board has proposed to delete the definitions of "waters of the U.S." and "wetlands." These are not found in the 40 CFR 144.3 or 270.2 definitions and to serve no direct function in the RCRA or UIC programs.

Section 704.101

This Section is drawn from 40 CFR 144.1, which USEPA has amended to update its reference to the SDWA. As it exists, the Board rule does not have this reference. However, the Board has proposed to add references which are appropriate in a State rule.

Section 704.106

This Section is drawn from 40 CFR 144.6, which USEPA has amended. The definition of Class II wells in Section 704.106(b)(1) has been modified to include wells which inject fluids associated with natural gas storage operations. Note that Class II wells are regulated by the Department of Mines and Minerals, rather than the Board. It is necessary for the Board to include a definition of this Class of wells to avoid the implication that wells associated with petroleum and gas production and storage would be Class V wells.

Section 704.122

This Section is drawn from 40 CFR 144.12, which USEPA has amended to update references and to add new requirements resulting from the amendments. Most of these concern enforcement by USEPA pursuant to the SDWA in states without primacy. They are not appropriate in Illinois rules.

Section 704.122(e) has been amended, pursuant to USEPA amendment, to allow the Agency to take emergency action as soon as it learns that contaminants have entered a USDW, without having to wait for entry into a public water supply. The Board has also added a reference to the Agency's seal authority under Section 34 of the Act. This will allow the Agency to act under Section 34(a) of the Act to seal equipment without having to show "an immediate danger to health," as would be required for action under Section 34(b) of the Act in the absence of a Board rule.

The Board has added a reference to the incorporation by reference of the national primary drinking water standards of 40 CFR 142, discussed above in connection with Section 702.104.

The Board has also corrected an apparent erroneous cross reference at the end of Section 704.122(b).

This Proposed Opinion supports the Board's Proposed Order for public comment of this same day.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Proposed Opinion was adopted on the 17th day of September, 1987, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board