

ILLINOIS POLLUTION CONTROL BOARD  
December 15, 1983

IN THE MATTER OF: )  
 )  
AMENDMENT OF 35 Ill. ) R83-39  
ADM. CODE 704.122 )  
(Underground Injection Control) )

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by J. D. Dumelle):

This matter comes before the Board upon a December 13, 1983 proposal to amend regulations requesting the amendment of 35 Ill. Adm. Code 704.122 pursuant to Section 13(c) of the Environmental Protection Act (Act). This action would amend the Underground Injection Control (UIC) rules which were adopted by the Board on May 13, 1983 (R81-32) consistent with a federal amendment to 40 CFR 144.12(a) (renumbered from 40 CFR 122.34(a)) which was adopted on April 1, 1983 at 48 Fed. Reg. 14194.

Pursuant to Section 13(c) of the Act, the Board was required to adopt "within 180 days regulations which are identical in substance to federal . . . amendments" under the UIC program. Therefore, this amendment should have been adopted by the start of October. However, no proposal to do so was forthcoming until this proposal was filed.

On or about December 5, 1983, Region V of the United States Environmental Protection Agency (USEPA) notified the Agency by telephone that USEPA Headquarters will not grant the State of Illinois primary enforcement responsibility under Section 1422 of the Safe Drinking Water Act (SDWA) until the State adopts the amendment to 35 Ill. Adm. Code 704.122 reflecting the federal amendment to 40 CFR 144.12 and such amendment becomes effective. USEPA confirmed its position in this matter in writing on December 14, 1983.

The Agency's UIC program is presently operating with monies received from a USEPA grant for federal FY-83 and thus terminated on September 30, 1983. However, since the State had unexpended FY-83 funds and also had a UIC program application pending before USEPA, the State was given a three-month extension to the FY-83 grant. This three-month extension ends December 31, 1983.

USEPA has taken the position that it will award UIC grants for FY-84 only to those states which have received primary enforcement authority under the Safe Drinking Water Act, under which the UIC program falls, and without the FY-84 grant, the Agency will not have sufficient funds to carry out the activities which the Agency believes are necessary for an environmentally sound and comprehensive UIC program.

Since the proposed amendment to 35 Ill. Adm. Code 704.122 will be adopted pursuant to Section 13(c) of the Act, the provisions and requirements of Title VII of the Act and Section 5 of the Administrative Procedure Act do not apply to this rulemaking. Therefore, the Board is empowered to adopt this amendment without hearing, public comment or review by the Joint Committee on Administrative Rules. While the Board in general, prefers to allow full public comment and opportunity for hearing even where such is not required, it is not practical in this case to do so.

The Board will, therefore, adopt the amendment as proposed in that the language is not only "identical in substance" to the federal language, but is in fact a verbatim amendment, and the Board can best effectuate the intent of the Legislature and can best protect the environment by immediate adoption. The Board notes that 35 Ill. Adm. Code 720.120(a) would normally require a listing in the proposal of "all amendments to 40 CFR Parts 260-265 which have been made since the last preceding amendment or proposal to amend Parts 720-725" and that no such listing was included in the present proposal. However, given the compelling reasons for expeditious action in this matter, the Board waives that requirement which was imposed largely for reasons of administrative convenience.

The Clerk of the Board is directed to file this adopted rule with the Secretary of State.

#### ORDER

The Board hereby adopts the following amendment to 35 Ill. Adm. Code 704.122.

Section 704.122 Prohibition of Movement of Fluid into USDW

- (a) ~~No authorization by permit or rule shall allow the movement of fluid containing any contaminant into underground sources of drinking water.~~ No owner or operator shall construct, operate, maintain, convert, plug, abandon or conduct any other injection

activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR 142 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

- (b) For Class I and III wells, if any water quality monitoring of an underground source of drinking water indicates the movement of any contaminant into the underground source of drinking water, except as authorized under 35 Ill. Adm. Code 730, the Agency shall prescribe such additional requirements for construction, corrective action, operation, monitoring or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with 35 Ill. Adm. Code 702.183 through 702.185 or the permit may be subject to revocation under 35 Ill. Adm. Code 702.186 if cause exists, or appropriate enforcement action may be taken if the permit has been violated. In the case of wells authorized by rule, see Section 704.141.
- (c) For Class V wells, if at any time the Agency learns that a Class V well may cause a violation of primary drinking water regulations under 40 CFR 142, it shall:
  - (1) Require the injector to obtain an individual permit;
  - (2) Issue a permit which requires the injector to take such actions (including where required closure of the injection well) as may be necessary to prevent the violation; or
  - (3) Take enforcement action.
- (d) Whenever the Agency learns that a Class V well may be otherwise adversely affecting the health of persons, it may prescribe such actions as may be necessary to prevent the adverse effect, including any action authorized under paragraph (c).
- (e) Notwithstanding any other provisions of this section, the Agency may take emergency action upon receipt

of information that a contaminant which is present in or is likely to enter a public water system may present an imminent and substantial endangerment to the health of persons.

(Board Note: See 40 CFR 144.12.)

(Source: Amended at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective as noted in 35 Ill. Adm. Code 700.106.)

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 15<sup>th</sup> day of December, 1983 by a vote of 7-0.



Christan L. Moffett, Clerk  
Illinois Pollution Control Board