

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R19-16
SDWA UPDATE, USEPA AMENDMENTS)	(Rulemaking- Public Water Supply)
(July 1, 2018 through December 31, 2018)	
)	

NOTICE OF FILING

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board ILLINOIS EPA'S FIRST NOTICE COMMENTS, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/Christine M. Zeivel
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Date: March 2, 2020

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ILLINOIS EPA’S FIRST NOTICE COMMENTS

NOW COMES the Illinois Environmental Protection Agency, (“Illinois EPA” or “Agency”) by and through its counsel, and hereby submits its First Notice Comments in the above captioned rulemaking.

The Reduction in Lead Drinking Water Act

1) The Illinois Pollution Control Board (“Board”) proposes updating 35 Ill. Adm. Code 611.126 to reflect the Reduction in Lead Drinking Water Act (“RLDWA”), which amended the Safe Drinking Water Act (“SDWA”) and became effective in 2014. *See* P.A. 111-380, §2(a)(2) and (b) (Jan. 4, 2011). The RLDWA (1) revised the definition of “lead free” in the SDWA to lower the allowable maximum lead content from 8.0 percent to a weighted average of 0.25 percent of the wetted surfaces for pipes, pipe fittings, plumbing fittings, and fixtures; (2) established a statutory method for calculating the lead content of those same components; and (3) eliminated the requirement that lead free products be in compliance with voluntary standards for leaching of lead from new plumbing fittings and fixtures. *Id.*; 42 U.S.C. §300g-6 (2016).

2) USEPA previously determined that Section 9 of NSF 61 had fulfilled the statutory requirements for a lead leaching standard. 62 Fed. Reg. 44684 (Aug. 22, 1997). Thus, Section 611.126(b)(3) currently requires plumbing fittings and fixtures that are intended for potable uses to comply with the NSF Standard 61, section 9, which is incorporated by reference in Section

611.102. Since the RLDWA removes the requirement that “lead free” products comply with voluntary standards for lead leaching, the Board proposes removing the incorporation of NSF 61 in Section 611.102¹ and the NSF 61 requirement in Sections 611.126(b)(3)² and 611.356(g)(1)(A)(ii).

3) NSF/ANSI 61 was revised in December 2008 to establish requirements for use when a 0.25 percent lead requirement needs to be met, which were placed in Annex G. In 2010, the lead content evaluation procedures for a 0.25 percent lead requirement were moved to NSF/ANSI 372 and Annex G was updated to simply reference NSF/ANSI 372. Annex G was later retired in 2013, but certification to NSF 61 occurs via the methods and values defined in NSF/ANSI 372. Where NSF/ANSI 61 establishes standards for the amount of lead that may leach into drinking water from the water contact materials within a product, NSF/ANSI 372 establishes a method for meeting the standard for the amount of lead that may be contained within the water contact materials in a product. *See* NSF/ANSI 372-2016. In fact, the statutory method for the calculation of lead contact is the method contained in NSF/ANSI 372.

4) Third party certification is currently required for certain products in widely adopted model plumbing codes. The most recent version of the single most widely adopted model plumbing code requires pipe, pipe fittings, joints, valves, faucets and fixtures used to supply water for potable purposes to comply with NSF/ANSI 372 method for lead content.³ To

¹ The Rulemaking Addendum to the Opinion and Order of the Board (“Addendum”) references removal of NSF 61 from Section 611.102(a), but NSF 61 is incorporated by reference in Section 611.102(b) as properly cited in the December 19, 2019 Opinion and Order of the Board (“Board Order”). *See* Addendum at 30 and Board Order at 12, n.21.

² The Board Order and the Board Note appended to the entry for Section 611.102(a) in the Addendum incorrectly reference Section 611.126(d)(3) instead of 611.126(b)(3). *See* Board Order at 11, n.13 and at 12 n.21, and Addendum at 30).

³ The general requirements of NSF/ANSI 372 comport with the RLDWA limits of less than or equal to 0.2 percent lead content for solders and flux and less than .025 percent weighted average lead content for wetted components of a product.

meet the NSF/ANSI 372 method, a product must be evaluated by an ANSI accredited third party certification body. *See* 82 Fed. Reg 4805, 4810 (Jan. 17, 2017).

5) In 2017 and in response to the RLDWA, the United States Environmental Protection Agency (“USEPA”) proposed rules establishing labeling requirements to differentiate plumbing products that meet the “lead free” requirements from those that are exempt and to require manufacturers to obtain certification of compliance with lead free requirements by an ANSI accredited third party certification body. 82 Fed. Reg. 4805.⁴ USEPA’s proposed labeling requirements would require manufacturers to utilize a combination of package and product labeling to inform users of compliance with the RLDWA. USEPA lists an appropriate third party certification marking “such as NSF/ANSI 372” as an example of an acceptable product marking. 82 Fed. Reg. at 4809. USEPA states that its proposed rules are intended, in part, to make it easier for regulatory bodies to implement and enforce the SDWA in a consistent manner by assuring that individuals purchasing, installing and inspecting potable water systems can identify “lead free” plumbing materials. 82 Fed. Reg at 4806, 4808.

6) While the Agency recognizes the statutory calculation method established in the RLDWA and supports the Board’s identical in substance (“IIS”) adoption of the method, the Agency also asks the Board to acknowledge what USEPA acknowledged when proposing its rules to implement the RLDWA and SDWA – regulatory and permitting bodies such as the Illinois EPA require some clear way to implement, oversee and enforce the lead free requirements. Accordingly, the Agency requests that Board replace NSF/ANSI 61 with NSF/ANSI 372-2016 in Sections 611.102 and 611.126(b). Inclusion of NSF/ANSI 372-2016 will

⁴ USEPA extended the original comment period for the SDWA rulemaking entitled “Use of Lead Free Pipes, Fittings, Fixtures, Solder and Flux for Drinking Water” until May 17, 2017. 82 Fed. Reg. 17406 (April 11, 2017). The Final Rule has not yet been promulgated.

aid the Agency's permitting, inspection and enforcement efforts under the SDWA while resulting in a rule as stringent as if not more protective than current federal law.³

7) Further support for the inclusion of NSF/ANSI 372 can be found in Sections 601.115 and 604.105. Section 601.115 was revised in Board Docket No. R18-17 to include NSF/ANSI 372-2011 and Section 604.105(f) requires that all "products that come in contact with water, including... pipes and related products, plumbing devices... or components which comprise chemical feed systems in a community water supply, must be certified to comply with NSF/ANSI Standard 61 and NSF/ANSI Standard 372, incorporated by reference in 601.115." Therefore, including NSF/ANSI 372 as part of the "lead free" definition in Section 611.126(b) would provide consistency while not imposing any additional hardship on suppliers.⁵ The Agency recognizes that Section 601.115 will need to be revised in the future to include the most recent versions of NSF/ANSI 372 and NSF/ANSI/CAN 61.

8) The Agency also requests that the Board's proposed language in 611.126(b) more closely reflect the language of the RLDWA in its IIS rulemaking. The addition of "plumbing fitting and fixtures" to Section 611.126(b)(2) would make the language identical to that of RLDWA and is more consistent with the prohibition on lead language in Section 611.126(a).

9) In light of the comments provided above for the Board's consideration, the Agency proposes the following language for Section 611.126(b):

- b) Definition of Lead Free. For purposes of this Section, the term "lead free" means:
 - 1) not containing more than 0.2 percent lead when used with respect to solder and flux; and

⁵ Illinois EPA would prefer NSF/ANSI 61 remain in Sections 611.102 and 611.126(b) as well, since it continues to be required under Illinois' public water supply regulatory scheme, but recognizes that the RLDWA removed the voluntary lead leaching standard in the SDWA for purposes of this IIS rulemaking. Illinois EPA has chosen to focus on the inclusion of NSF/ANSI 372 in its First Notice Comments as it is the method most imperative to ensuring that the Agency can properly inspect and permit community water supply facilities for compliance with lead free requirements.

- 2) not more than a weighted average of 0.25 percent lead when used with respect to pipes, pipe fittings, plumbing fittings, and fixtures.
- 3) When used with respect to any drinking water system component that conveys or dispenses water for human consumption, refers to components in compliance with NSF/ANSI Standard 372 incorporated by reference in Section 611.102.
- 4) The weighted average lead content of a pipe, pipe fitting, plumbing fitting, or fixture must be calculated by using the following formula: For each wetted component, the percentage of lead in the component must be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component must be added together, and the sum of these weighted percentages will constitute the weighted average lead content of the product. The lead content of the material used to produce wetted components is used to determine compliance with subsection (b)(2). For lead content of materials that are provided as a range, the maximum content of the range must be used.

10) Since the Board's proposed revisions to Section 611.356(g)(1)(A)(ii) only refer to the requirements of Section 611.126(b), the Agency does not recommend any further revision to Section 611.356(g)(1)(A)(ii) so long as the Agency's recommendations for revising Section 611.126(b) are adopted.⁶

Schedule for Compliance with Cryptosporidium Treatment Requirements

11) The Board's proposal removes all past cryptosporidium treatment compliance dates from Section 611.1013(c) and adds language stating that a supplier must immediately comply with treatment requirements.

12) While all existing community water supplies ("CWSs") met the treatment compliance deadlines after the initial round of source monitoring, CWSs are still installing

⁶ The Agency notes that Illinois Department of Public Health ("IDPH") utilizes parts of Part 611 for non-community water supplies, but is uncertain whether IDPH specifically utilizes this specific provision as to waivers in Section 611.356. The Agency also notes that IDPH was not included in the Board Service List for this rulemaking and now adds IDPH to its Service List for these First Notice Comments.

treatment based on the second round of monitoring results. Pursuant to its Special Exception Permit ("SEP") authority in Section 611.1013(d) and (e), the Agency uses the date intervals from the 611.1013(c) to establish those treatment deadlines.

13) Furthermore, the Agency uses the date intervals from Section 611.1013(c) to set cryptosporidium monitoring for new surface water treatment plants pursuant to its authority in Section 611.1001(f).

14) The Agency requests that the Board retain the current language and dates contained in Section 611.1013(c).

WHEREFORE, The Illinois EPA respectfully submits these comments, and requests the Board to proceed expeditiously to Second Notice.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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CERTIFICATE OF SERVICE

I, the undersigned, on affirmation certify the following:

That I have served a copy of the foregoing NOTICE OF FILING and ILLINOIS EPA'S FIRST NOTICE COMMENTS upon persons listed on the Service List by e-mail at the e-mail addresses listed on the Service List, unless otherwise noted on the Service List.

That my e-mail address is Christine.Zeivel@illinois.gov.

That the number of pages in the e-mail transmission is nine (9).

That the e-mail transmission took place before 4:00 p.m. on March 2, 2020.

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