

**From:** [McCambridge, Michael](#)  
**To:** [Terranova, Sara](#)  
**Cc:** [Diers, Stefanie](#); [Tipsord, Marie](#); [Fox, Tim](#); [Brown, Don](#)  
**Subject:** RE: Identical in substance scenario  
**Date:** Thursday, March 16, 2023 7:08:36 PM

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If you refer to the *Federal Register* notice of December 17, 2021 (86 Fed. Reg. 71574), I have it. In that notice, USEPA reiterates the October 16, 2024 compliance date that it established on June 16, 2021 (86 Fed. Reg. 31939).

I examined a number of sources today for information about the LCRI, including some relating to the litigation over the LCRR. The major issues seem to surround the lack of an MCL for lead, the speed and thoroughness of replacing LSLs, and EJ issues. I read that the only area USEPA will not change with the LCRI is LSL inventory requirements.

**Don Brown:** Please replace the earlier e-mails with this one, but retain the USEPA memo attached to the last e-mail. Have I confused you yet?

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**From:** Terranova, Sara <Sara.Terranova@Illinois.gov>  
**Sent:** Thursday, March 16, 2023 1:29 PM  
**To:** McCambridge, Michael <Michael.McCambridge@illinois.gov>  
**Cc:** Diers, Stefanie <Stefanie.Diers@Illinois.gov>; Tipsord, Marie <Marie.Tipsord@illinois.gov>; Fox, Tim <Tim.Fox@illinois.gov>  
**Subject:** Re: Identical in substance scenario

Mr. McCambridge, As a follow up to your question if I had any indication where USEPA is going with the LCRI, please see the attached memo from USEPA regarding State Primacy for the 2021 Lead and Copper Rule Revisions. Specifically, please see Section II. USEPA states: "As described in the December announcement, EPA intends to propose significant changes to the LCRR requirements that could affect all parts of the rule other than the initial inventory submission." I can also pull the federal register in which this memo is referencing if that would be helpful.

You also mentioned the implementation deadline for the LCRR is October 16, 2024. Could you tell me where that deadline originated from?

I appreciate your time on this!

Sara

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**From:** McCambridge, Michael <[Michael.McCambridge@illinois.gov](mailto:Michael.McCambridge@illinois.gov)>

**Date:** Tuesday, March 14, 2023 at 8:01 PM

**To:** Terranova, Sara <[Sara.Terranova@Illinois.gov](mailto:Sara.Terranova@Illinois.gov)>

**Cc:** Diers, Stefanie <[Stefanie.Diers@Illinois.gov](mailto:Stefanie.Diers@Illinois.gov)>, Tipsord, Marie <[Marie.Tipsord@illinois.gov](mailto:Marie.Tipsord@illinois.gov)>, Fox, Tim <[Tim.Fox@illinois.gov](mailto:Tim.Fox@illinois.gov)>

**Subject:** RE: Identical in substance scenario

As you may be aware, I had hoped to retire in January. However, I am working to update and correct the text of Part 611 (and the hazardous waste rule in Subtitle G) before I leave. I delayed my retirement to do this. I am the person most familiar with these rules and the federal program they implement, and I do not want to burden the State with what I see needs doing after my departure, so I remain.

At present, the R21-10/R22-2 SDWA update has my full attention, and this will continue until I have a proposal before the Board. I believe the Board will propose amendments this Spring.

Having said this, I would recommend against delaying adopting the LCRR until USEPA adopts the LCRI unless the LCRI proves to be inconsistent with the LCRR. The implementation deadline for the LCRR is October 16, 2024. I have completed work on the LCRR (and continue work on the rest of Part 611) for proposal.

I hope to retire sometime during 2024—maybe as late as January 1, 2025. I would not feel comfortable leaving the LCRI and the LCRR to my successor, since I think Jointly incorporating the combined LCRI and LCRR into the Illinois rules would be a much more difficult task. Whoever takes over for me will be on a steep learning curve, and the combination of both rules will make that climb more difficult.

Do you have any indication where USEPA is going with the LCRI? That information could sway my opinion.

Further, R21-10/R22-2 includes the “lead free” fixtures and fitting rule and alternative equivalent methods that should go forward. Further, I have the handful of essential corrections and many non-substantive stylistic corrections I am reviewing. I do not want to leave those undone. It is easier at this point to proceed than to reverse those.

Working on the LCRR, I stumbled into section 17.12 and its requirement for rules for replacing lead service lines. I did not have the luxury of time to figure out what they would add to the LCRR requirements. I see many provisions in section 17.12 that seem more stringent than those in the LCRR.

Deciding what is within a statutory IIS mandate is a call for the Board. I can only advise the Board what I believe. There are others who speak more persuasively than I, and they take into account

factors beyond my pay grade. (I may have acquired 35 years of experience in the federal IIS programs, but I have not progressed to the ranks of those who really matter at the Board.)

I personally evaluate whether a subject matter is within an IIS mandate based on several considerations:

1. The statutory authority USEPA used to adopt a federal rule;
2. How cleanly a federal rule falls within an IIS program area;
3. Whether (and how clearly) USEPA has established a standard for the State to implement;
4. Whether the rule implements a federal standard the State has no discretion but to implement to obtain/maintain primacy;
5. Whether the rule falls within Board and Agency functions under the statutory framework (if not, whether including the federal rule would aid a sister agency in Illinois, like DPH);
6. The measure of substantive discretion needed to craft the rule, as opposed to discretion over the details and mechanics of the rule;
7. Whether public comments in an IIS proceeding would inform the Board's discretion as well as would section 27 rulemaking;
8. Whether using the IIS procedure would run afoul of statutory intent (and JCAR);
9. Whether there is any interested sector that would prefer the Board pursue section 27 rulemaking for substantive reasons;
10. Whether the speed of IIS rulemaking would aid fulfilling a federal or Illinois statutory deadline; and
11. Whether the rule preserves a more stringent and not inconsistent Illinois rule already established by section 27 rulemaking.

On the last point, section 7.2(a)(6) provides: "Wherever appropriate, the Board regulations shall reflect any consistent, more stringent regulations adopted pursuant to the rulemaking requirements of Title VII of this Act and Section 5-35 of the Illinois Administrative Procedure Act." This does not directly consider accommodating more stringent Illinois statutory requirements, but arguments may favor doing so. That is a decision for the Board informed by public comments. At the least, the IIS rules might benefit from appropriately placed Board notes highlighting more stringent Illinois statutory requirements.

I looked at section 17.12 prompted by your observation that the rules will not be IIS to USEPA's LCRR and LCRI requirements. I see many statutory requirements embellishing or changing what LCRR requires. Many aspects of section 17.12 may be more stringent than rules in the LCRR. (I do not consider requirements for funds to aid replacing lead service lines, MOBE requirements, bid and contract requirements, etc. that are outside the Board's ordinary function.) Absent detailed

consideration of how 17.12 differs from the LCRR and whether section 7.2(a)(6) embraces more stringent Illinois statutory requirements, I would suggest that section 27 rulemaking will be needed to incorporate section 17.12 rules.

As you are aware, these are all matters for informed Board decision. I cannot form an opinion in specific any regard without more information and careful consideration. I can only speak in general terms of the considerations coming directly to my mind.

I will inform the Board that an issue may exist, and I (or someone else) will compare section 17.12 and LCRR in more detail after I have assembled a proposal for the Board. I want nothing to slow that already-delayed process on a proposal for R21-10/R22-2.

If you need more information, please ask. If you can provide information on the LCRI or the nature of any prospective section 17.12 rules, please do so.

Michael McCambridge, Attorney  
Illinois Pollution Control Board  
[Michael.mccambridge@illinois.gov](mailto:Michael.mccambridge@illinois.gov)  
219-614-5082 (personal cell)

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**From:** Terranova, Sara <[Sara.Terranova@Illinois.gov](mailto:Sara.Terranova@Illinois.gov)>  
**Sent:** Tuesday, March 14, 2023 3:05 PM  
**To:** McCambridge, Michael <[Michael.McCambridge@illinois.gov](mailto:Michael.McCambridge@illinois.gov)>  
**Cc:** Diers, Stefanie <[Stefanie.Diers@Illinois.gov](mailto:Stefanie.Diers@Illinois.gov)>  
**Subject:** Identical in substance scenario

Mr. McCambridge,

Almost a year later now, I have a few more questions I am hoping you can help me with!

Pursuant to Section 1413 of the Safe Drinking Water Act (42 USCS 300g-2), when USEPA issues new drinking water regulations, primacy agencies are required to submit requests for approval of modifications of their program to adopt these new requirements no later than two years after the EPA regulation is promulgated. States may also apply for an extension of up to two years. Currently, the primacy application deadline for the Lead and Copper Rule Revisions (LCRR) is December 2023. However, because USEPA intends to propose the Lead and Copper Rule Improvements (LCRI) in fall 2023, and take final action in 2024, USEPA is encouraging states to apply for an extension to the December 2023 primacy deadline so as to group the program revisions for the LCRR and LCRI into a single primacy application. The new primacy application deadline would be December 2025.

**Question:** Does the Board anticipate adopting both the LCRR and LCRI in R21-10 and R22-2, an identical in substance rulemaking proceeding, prior to the December 2025, primacy deadline (presuming an extension from USEPA is granted)?

Section 17.12 of the Illinois Environmental Protection Act (Act) lays out State regulations regarding lead line replacement and notification, following the federal LCRR. The Illinois EPA anticipates drafting and proposing to the Board State rules necessary to implement and administer this Section of the Act. These rules *will not* be identical in substance to the federal language in the LCRR or the LCRI.

Section 7.2 of the Act states the Board regulations shall reflect any consistent, more stringent regulations adopted pursuant to the rulemaking requirements of Title VII of the Act and Section 5-35 of the Illinois Administrative Procedure Act.

**Question:** Should the Agency propose rules that implement and administer Section 17.12 of the Act within the Board's identical in substance rulemaking in R21-10 and R22-2, or should the Agency simultaneously propose these rules in separate rulemaking process?

I appreciate your help!

Thanks,

Sara G. Terranova  
Assistant Counsel  
Illinois EPA  
(217) 558-3098

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**From:** McCambridge, Michael <[Michael.McCambridge@illinois.gov](mailto:Michael.McCambridge@illinois.gov)>

**Sent:** Monday, April 25, 2022 12:38 PM

**To:** Terranova, Sara <[Sara.Terranova@Illinois.gov](mailto:Sara.Terranova@Illinois.gov)>

**Cc:** Tipsord, Marie <[Marie.Tipsord@illinois.gov](mailto:Marie.Tipsord@illinois.gov)>; Diers, Stefanie <[Stefanie.Diers@Illinois.gov](mailto:Stefanie.Diers@Illinois.gov)>; Fox, Tim <[Tim.Fox@illinois.gov](mailto:Tim.Fox@illinois.gov)>; McGill, Richard <[Richard.McGill@illinois.gov](mailto:Richard.McGill@illinois.gov)>

**Subject:** RE: Identical in substance scenario

My opinion on IIS rulemaking might differ from others' on the fringes of IIS rulemaking. I have seen IIS rulemaking efficiently do amazing things where there are clear existing standards to draw from.

Ordinarily, the existing standards are federal. Occasionally, there is an Illinois statutory or regulatory requirement that the IIS rulemaking must retain or incorporate into IIS rules. IIS rulemaking does this readily where those State requirements are defined, and a full record is not needed to derived them.

An IIS record, consisting of the federal and State rules and statutory provisions reciting clear standards supplemented by information the Agency and interested parties submit, can enable the Board to adopt clear, existing standards. Where the Board needs guidance, the Board has a history of seeking it.

Where the Board requires information to develop the standard or how it applies, IIS rulemaking is inappropriate. General rulemaking is the appropriate route where the Board must substantively derive a standard or how to implement a standard.

I can think of existing State statutory or regulatory standards in each of the IIS program areas that the Board worked around to establish and/or maintain IIS rules. They all worked well. In nearly all IIS mandates, there is a provision clearly directing the Board to adopt more stringent State standards by general rulemaking. It does not matter whether the more stringent State standards arose before or after the advent of IIS rules. Reviewing the IIS rules, Board notes will indicate those State-only or more stringent State standards.

The IIS rules have worked well in eight subject matter areas. I offer my personal opinion that it would have worked better for recent federally derive rules that proceeded by general rulemaking.

The Board adopted federal CCR standards by general rulemaking. There was substantial attack on the underlying minimum federal standards in the rulemaking. Attack on the underlying federal standard (or any Illinois statutory standard) is irrelevant in an IIS proceeding. The Board could not have deviated from the minimum federal standards in the context of an IIS rulemaking absent clear statutory direction that the Board should use some other standard. Further, the only way the Board can change a State-only rule in the context of IIS rulemaking is if the State rule is inconsistent with a corresponding USEPA standard.

The State will struggle to keep up with USEPA changes in the evolving federal CCR program. An IIS mandate for CCR rules would have obviated that. The historical precedent is the NAAQS program. The State struggled with rules before the General Assembly made those the subject of IIS rulemaking.

This is all speculative with no idea of a specific subject matter prompting your questions. I hope I addressed your concerns. If I have not, more information might allow me to do so.

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**From:** Terranova, Sara <[Sara.Terranova@Illinois.gov](mailto:Sara.Terranova@Illinois.gov)>  
**Sent:** Friday, April 22, 2022 12:26 PM  
**To:** McCambridge, Michael <[Michael.McCambridge@illinois.gov](mailto:Michael.McCambridge@illinois.gov)>  
**Cc:** Diers, Stefanie <[Stefanie.Diers@Illinois.gov](mailto:Stefanie.Diers@Illinois.gov)>  
**Subject:** Identical in substance scenario

Mike, I have some general procedural questions regarding identical in substance rulemakings. Would you be available for a call this afternoon or early next week to talk?

Below are my questions:

In a scenario where there is a requirement to adopt federal language and there is corresponding

state statutory language that expands beyond the requirements in the federal language – would this scenario call for an identical in substance rulemaking? Would only the federal language be required to go through the identical in substance process and the additional state language go through a traditional rulemaking process? Could the required federal language be adopted as written and supplemented then with the additional state statutory requirements in one rulemaking? Or is there another scenario all together I am not considering?

I would very much appreciate your insight!

Thanks!

Sara Terranova

Assistant Council

Division of Legal Counsel, Illinois EPA

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF WATER

## **MEMORANDUM**

**SUBJECT:** State Primacy for the 2021 Lead and Copper Rule Revisions

**FROM:** Jennifer L. McLain, Director  
Office of Ground Water and Drinking Water

**TO:** Water Division Directors, Regions I – X

In December 2021, EPA concluded that there are significant opportunities to improve the Lead and Copper Revisions Rule (LCRR) and announced that the Agency will develop a new proposed rule, the Lead and Copper Rule Improvements (LCRI), that will strengthen the regulatory framework. EPA does not recommend States spend time or resources to prepare a primacy revision application for the LCRR until EPA promulgates the final Lead and Copper Rule Improvements (LCRI). Instead, EPA encourages States to apply for an extension to the December 18, 2023 primacy application deadline and to bundle LCRR and LCRI revisions into a single primacy revision application.

This memorandum outlines a streamlined extension application process in order to minimize the resources that primacy agencies spend on the extension; including a template for the extension request to meet EPA's regulatory requirements.

### **I. Background**

Under the Safe Drinking Water Act, EPA establishes regulations that public drinking water systems must meet. Under Section 1413 of the Act, EPA authorizes States, territories, and Indian Tribes to have primary responsibility for administration and enforcement of these drinking water regulations (also called primacy) if they meet certain requirements. When EPA issues new drinking water regulations, primacy agencies are required to submit requests for approval of modifications of their program to adopt these new requirements no later than two years after the EPA regulation is promulgated (i.e., published in the Federal Register). Under EPA's implementing regulations, States may apply for an extension of up to two years and EPA may approve the extension if it meets certain regulatory criteria.

EPA intends to propose the Lead and Copper Rule Improvements (LCRI) in 2023 and to take final action on the LCRI proposal prior to the date that water systems must comply with the LCRR (October 16, 2024). On January 15, 2021 EPA published the National Drinking Water Regulation: Lead and Copper Rule Revisions. EPA conducted a review of the LCRR in accordance with Executive Order

13990, including hosting a series of engagements from April to August of 2021 to obtain public input. In December 2021, EPA published the LCRR review results and announced it would initiate the LCRI rulemaking process. EPA also determined that there are advancements in the LCRR and that rule will support near term development of actions to reduce lead in drinking water. Specifically, lead service line inventories that will be developed under the LCRR are necessary to advance the goal to replace all lead service lines. EPA announced its intention to maintain the requirements for information to be submitted in the initial LSL inventory and the compliance deadline of October 16, 2024. EPA recognized the concern that States and Tribes may have with a December 2023 primacy deadline for the LCRR in light of EPA's intention to take final action on proposed revisions to that rule in October 2024. Accordingly, EPA noted the availability of an extension of up to two years for primacy applications.

At this time, EPA does not recommend States spend time or resources on preparing a primacy revision application for LCRR until EPA takes final action on the proposed LCRI. Instead, EPA encourages States to apply for an extension to the December 18, 2023 primacy application deadline so as to group the program revisions for the LCRR and LCRI into a single primacy application.

## **II. Primacy Extension Requests**

EPA interprets the primacy revision application deadline in 40 CFR 142.12(b)(1) to be calculated using the publication date of the notice announcing the outcome of the E.O.13990 review, December 17, 2021. As a result, primacy revision applications are due no later than December 18, 2023. Prior to that date, a state or tribe may apply for an extension of the deadline for up to two years to group the program revisions for the LCRR and LCRI into a single primacy application in accordance with 40 CFR 142.12(b)(2)(i)(C).

EPA is providing the attached template that states and tribes may use to request extensions, as well as instructions on how to fill it out to specifically request grouping LCRR and LCRI. EPA is also providing a workload/work share responsibilities checklist to describe the workload activities that a state primacy agency and EPA can use to specify roles and responsibilities for implementing the LCRR requirements associated with service line inventories. Special considerations and information are also provided for the state primacy agency to be able to determine/evaluate workload when implementing certain requirements of the LCRR.

## **III. Primacy Applications**

As described in the December announcement, EPA intends to propose significant changes to the LCRR requirements that could affect all parts of the rule other than the initial inventory submission. EPA anticipates that states will want to avoid the inefficient adoption of multiple rules and submission of multiple primacy revision packages over a short period of time so will wait to adopt the LCRR as revised by the LCRI. Since EPA anticipates states will submit extension requests, we are not planning for resources to review primacy applications for the LCRR prior to the Dec 18, 2023 primacy extension request deadline or the October 16, 2024 compliance date. The LCRR is the subject of a legal challenge – Newburgh Clean Water Project, et. al v. U.S. EPA, Case No. 21-1019, consolidated with 21-1020

and, 21-1076 (D.C. Cir). Recently, EPA sought a remand of the Rule in light of EPA's ongoing efforts to revise it. The LCRR remains in effect during the remand.

Thank you for your continued commitment to the public health protection objectives of the SDWA. If you have questions, please contact me or have your staff contact Kira Smith at [smith.kira@epa.gov](mailto:smith.kira@epa.gov).