

ILLINOIS POLLUTION CONTROL BOARD

August 18, 2023

IN THE MATTER OF: )  
SDWA UPDATE, USEPA AMENDMENTS ) R21-10  
(July 1, 2020, through December 31, 2020) )  
)  
SDWA UPDATE, USEPA AMENDMENTS )  
(July 1, 2021, through December 31, 2021) ) R22-2  
) (Identical-in-Substance  
) Rulemaking - Public Water Supply)  
) (Consolidated)

**PUBLIC COMMENT**

We, the undersigned, provide the following public comment on the above captioned proposed rules.

- 1) The Pollution Control Board (Hereinafter referred to as “The Board”) has filed a proposed Rule and published said proposed Rule in the Illinois register that begins on page 9567 on July 14, 2023, Volume 47, Issue 28.
- 2) The period for public comment has not expired.
- 3) The Board proposed amendments to Illinois regulations that are “identical in substance” (IIS) to drinking water regulations adopted by the United States Environmental Protection Agency (USEPA) in the second half of 2020 and first half of 2021. Among other things, the proposed rule provides regulation on Lead Service Line (“LSL”) replacements.
- 4) MPC does not dispute that said IIS proposed rule conforms to USEPA’s regulations.
- 5) It is well established under Federal law that states may adopt laws and regulations that are more stringent than USEPA requirements.
- 6) Illinois, in the case of this proposed rule, has prior hereto adopted a more stringent rule for Illinois.
- 7) Specifically, Illinois passed PA 102-0613 on May 31<sup>st</sup>, 2021 (signed into law by the Governor on August 27<sup>th</sup>, 2021).

Partial Replacement of Lead Service Lines

8) 415 ILCS 5/17.12 (ff) provides for a blanket prohibition on partial lead service replacement lines (with certain limited exceptions) by owners or operators of community water supplies.

9) That said prohibition is more stringent than federal law on this subject.

10) The proposed rule does not address Illinois' current law on this subject.

11) Specifically, the provisions of the proposed rule, Section 611.354 located at pages 9848 through 9857 are inconsistent with Illinois law as said sections would allow partial replacements in more circumstances than currently permitted under Illinois law. The proposed rule would permit partial replacements in cases where owners do not replace, at their own expense, the customer-owned portion of the lead service line.

12) Illinois law only permits partial replacements under the following circumstances: Emergency repairs. The consent of the owner (or their willingness to pay) is not a factor under Illinois law in determining whether a partial replacement is allowed.

13) The proposed rules will serve to create confusion as to what is required for operators of utilities, property owners, contractors, and other parties who may seek to replace lead service lines in Illinois.

Mandatory Lead Service Line Replacement Schedules

14) 415 ILCS 5/17.12 (v) requires community water supplies to replace all lead service lines in Illinois on timelines specified under subparagraphs (v)1-4. This requirement pertains to all known lead service lines in Illinois.

15) The proposed rule requires replacement of lead service lines only in specified situations, including exceedance of lead trigger level and lead action level as defined in the proposed rule as delimited in 611.354(f-g) on pages 9850-9853.

16) The proposed rule therefore ignores the lead service line replacement requirements of Illinois state law.

17) The proposed rules will serve to create confusion as to what is required for operators of utilities in Illinois.

Definition of lead service lines

18) 415 ILCS 5/17.12 (c) defines "lead service line" as "a service line made of lead or service line connected to a lead pigtail, lead gooseneck, or other lead fitting" (emphasis added).

19) 415 ILCS 5/17.12 (c) further defines “service line” as “the piping, tubing, and necessary appurtenances acting as a conduit from the water main or source of potable water supply to the building plumbing at the shut-off valve or 18 inches inside the building, whichever is shorter.”

20) Therefore, Illinois state law requires replacement of service lines composed of lead fittings from the water main to building shutoff valve or 18 inches inside the building, whichever is shorter, inclusive of goosenecks, pigtails, and other lead fittings.

21) The proposed rule defines “lead service line” in Section 611.350(b) on page 9798 as “a portion of pipe made of lead connecting the water main to the building inlet...If the only lead piping serving a home is a lead gooseneck, pigtail, or connector that is not a galvanized service line that is a lead service line, the service line is not a lead service line” (emphasis added).

22) The proposed rule’s definition therefore directly contradicts the more stringent definition of 415 ILCS 5/17.12.

23) The proposed rules will serve to create confusion as to the definition of a lead service line which must be replaced under state and federal law.

#### Public Funding for LSL Replacements on Customer Owned Property

24) 415 ILCS 5/17.12 (ee) mandates that all owners or operators of a community water supply fund the replacement of both the public side and the private side of any LSL without any required reimbursement by a customer if the owners or operators receive grant funding under 415 ILCS 5/17.12.

25) The proposed rule states in several sections that “The supplier needs not bear the cost of replacing the customer-owned portion of any lead service line.” (Ex: page 9853).

26) The proposed rule is therefore partially incorrect as to LSL projects that are funded by state grants.

27) The proposed rules will serve to create confusion as to what is required for operators of utilities in Illinois.

#### Additional requirements on notification, planning, inventories, filtering, and testing

28) 415 ILCS 5/17.12 contains specific provisions related to inventorying lead service lines, planning for lead service line replacement, notifying residents of replacement work, and provision of filters.

29) 220 ILCS 10/5, 225 ILCS 320/35.5, and associated administrative rules require testing of lead in drinking water and schools.

30) The proposed rule contains requirements for inventorying, planning, notification, replacement, filtering, and testing in childcare facilities and schools that may or may not conflict with stricter rules established under state law.

31) Any such conflicts may create confusion among residents, childcare providers, school administrators, community water supplies, property owners, contractors, and other stakeholders affected by the proposed rule.

Proposed Amendment to Proposed Rule

32) In order to comply with USEPA timeframes (which we acknowledge are important for delegation and funding purposes) in which this rule must be adopted, we propose that an additional provision be inserted into the rule that states as follows:

“This rule shall not limit the applicability of 415 ILCS 5/17.12 (inclusive), which contains more stringent requirements for lead service line identification, replacement, resident notification, filtering, and associated matters including but not limited to: 1) prohibiting partial lead service line replacements; 2) mandatory replacement of lead service lines statewide; 3) defining lead service lines to include pigtails, goosenecks and related appurtenances; 4) requiring public funding of LSL in any case where grants are provided to operators under 415 ILCS 5/17.12 (ee). Owners, Operators, and all other affected stakeholders are directed to comply with provisions of 415 ILCS 5/17.12.”

33) That after this proposed rule is adopted, the Board direct that further rules be promulgated amending the IIS rule to explicitly incorporate the more stringent Illinois requirements pertaining to the above matters and other matters contained in 415 ILCS 5/17.12.

34) By doing so, USEPA timelines are fulfilled and shortly thereafter, a new amended rule can remove any potential confusion by stakeholders as to the requirements of Illinois law for LSL replacement.

Thank you for this opportunity to provide public comment. Please direct any questions to Justin Williams, Policy Manager, Metropolitan Planning Council, at [jwilliams@metroplanning.org](mailto:jwilliams@metroplanning.org) or (312) 863-6035.

Respectfully Submitted,

Metropolitan Planning Council

Illinois Environmental Council

Climate Reality Project: Chicago Metro Chapter

Save Our Illinois Land

Center for Neighborhood Technology

Elevate

League of Women Voters of Chicago

Equitable Resilience & Sustainability LLC

Eco-Justice Collaborative

Faith in Place

Earthjustice

League of Women Voters of Illinois

Little Village Environmental Justice Organization

Alliance for the Great Lakes

Natural Resources Defense Council