

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
SDWA UPDATE, USEPA AMENDMENTS)	R 21-10
July 1, 2020, through December 31, 2020)	(Identical-in-Substance Rulemaking-
)	Water)
SDWA UPDATE, USEPA AMENDMENTS)	R22-2
(January 1, 2021, through June 30, 2021))	(Identical-in-Substance Rulemaking-
)	Water)

NOTICE OF FILING

TO: See Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Illinois Pollution Control Board, the Illinois Environmental Protection Agency’s MOTION FOR LEAVE TO FILE INSTANTER ADDITIONAL COMMENTS and the ADDITIONAL COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, a copy of which is served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Sara Terranova
Sara Terranova
Assistant Counsel
Division of Legal Counsel

DATED: October 3, 2023

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MOTION FOR LEAVE TO FILE INSTANTER ADDITIONAL COMMENTS

The Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) requests that the Illinois Pollution Control Board (“Board”) grant this Motion for Leave to File, Instanter, additional comments pursuant to Section 101.500 Board’s Procedural Rules. 35 Ill. Adm. Code 101.500. Due to the upcoming December 16, 2023, deadline for the Agency to seek primary responsibility for the administration and enforcement of the federal Lead and Copper Rule Revisions within the State of Illinois, the Agency finds it necessary to file brief additional comments for the Board’s consideration.

WHEREFORE, Illinois EPA respectfully requests that the Board grant its Motion for Leave to File Instanter, Additional Comments and accept the attached Additional Comments as filed on this date.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Sara Terranova
Sara Terranova
Assistant Counsel
Division of Legal Counsel

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ADDITIONAL COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, ("Illinois EPA" or "Agency") by and through its counsel, submits the following additional comments:

Background

1. On December 16, 2021, the federal Lead and Copper Rule (“LCRR”) became effective. 86 Fed. Reg. 31939.
2. State requests for approval of program revisions to adopt new or revised U.S. EPA regulations must be submitted to U.S. EPA not later than two years after promulgation of the new or revised U.S. EPA regulations. 40 CFR 142.12(b)(1). Therefore, to attain the primary responsibility for administration and enforcement of the LCRR within the State, Illinois EPA must submit a request to U.S. EPA for approval of program revisions adopting the LCRR into Illinois regulations no later than December 16, 2023.
3. The Illinois Pollution Control Board (“Board”) is statutorily required to adopt the verbatim text of U.S. EPA regulations as are necessary and appropriate to secure federal authorization of the (LCRR implementation) program (415 ILCS 5/7.2(a)) within one year after federal promulgation (415 ILCS 5/7.2(b)). The one-year adoption deadline may be extended if necessary to complete the rulemaking. 415 ILCS 5/7.2(d).

4. Noting the “volume and complexity of the amendments” as reason for extending the one-year adoption deadline of verbatim text, the Board proposed amendments to Illinois regulations incorporating the LCRR in this “identical-in-substance” (“IIS”) rulemaking on June 1, 2023. R21-10/R22-2 Opinion and Order (June 1, 2023).

5. On August 18, 2023, several groups filed a joint public comment in the above captioned matter. *See* Public Comment #4. The Public Comment addressed the applicability and stringency of Section 17.12 of the Illinois Environmental Protection Act (“Act”) and included a proposed amendment regarding the stringency of Section 17.12 to the Board’s proposed rule. *See* Public Comment #4.

6. On August 25, 2023, U.S. EPA submitted a public comment providing over 65 pages of comments noting both substantive and typographical errors within the Board’s IIS proposed rule when compared to the Federal regulations.¹ *See* Public Comment #5.

7. On August 28, 2023, the Illinois EPA submitted a public comment regarding what the Agency believes are inconsistencies between the proposed rule and the federal LCRR and the fact that the proposed rule does not take into consideration Section 17.12 of the Act. *See* Public Comment #6. The Agency encouraged the Board to adopt verbatim the federal LCRR language in this rulemaking and all other IIS going forward to avoid these issues, especially where it causes the Agency to receive a disapproval from U.S. EPA with respect to primacy. *See Id* at 4. The Agency went on to say that deviation should only be in instances where Illinois is more stringent.” *See Id* at 4.

¹ U.S. EPA’s review included a review of the Board’s proposed analytical methods.

Additional Comments

8. The Agency would like to reiterate the Agency's previously made comment regarding the Board's statutory authority to adopt the verbatim text of the federal LCRR and emphasize that Illinois EPA must submit a request to U.S. EPA for approval of program revisions adopting the LCRR into Illinois regulations no later than December 16, 2023.

9. It is important to note that Illinois EPA is not seeking an extension from U.S. EPA to request approval of program revisions adopting the LCRR into Illinois regulations. Therefore, The Agency continues to strongly encourage the Board to *"...adopt the verbatim text of such USEPA regulations as are necessary and appropriate for authorization of the program"*, as required by the Act. The Agency also encourages the Board to make only *"those changes that are necessary for compliance with the Illinois Administrative Code, and technical changes that in no way change the scope or meaning of any portion of the regulations."* 415 ILCS 5/7.2.

10. However, taking into consideration Public Comment #4, if the Board chooses to include any language addressing the stringency of Section 17.12, the Agency cautions that the entirety of Section 17.12 is not more stringent than the LCRR. Through the primacy approval process, Illinois EPA will continue to work with U.S. EPA to determine which subsections within Section 17.12 U.S. EPA agrees and will approve as more stringent than the LCRR. Therefore, to maintain accuracy and until U.S. EPA provides primacy approval, the Agency respectfully discourages the Board from identifying which subsections in Section 17.12 are more stringent than the federal requirements in the LCRR.

11. Therefore, the Agency respectfully requests that the Board adopt the verbatim text of the federal LCRR pursuant to 415 ILCS 5/7.2. In addition, the Agency emphasizes that Illinois EPA must submit a request for approval of program revisions adopting the LCRR into Illinois

regulations no later than December 16, 2023. Finally, if the Board chooses to add language regarding the stringency of 415 ILCS 5/17.12, the Agency respectfully cautions that the entirety of Section 17.12 is not more stringent than the LCRR and the Agency will continue to have discussions with U.S. EPA regarding stringency during the required primacy approval process.

WHEREFORE, the Agency requests the Board accept these Additional Comments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Sara Terranova
Sara Terranova
Assistant Counsel
Division of Legal Counsel

DATED: October 3, 2023

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CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on October 3, 2023, I served true and correct copies of the Agency's MOTION FOR LEAVE TO FINE INSTANTER ADDITIONAL COMMENTS and the ADDITIONAL COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY upon the persons and by the methods pursuant to the service list hereto attached.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Sara Terranova
Sara Terranova
Assistant Counsel
Division of Legal Counsel

DATED: October 3, 2023

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