

ILLINOIS POLLUTION CONTROL BOARD
October 19, 2023

IN THE MATTER OF:)	
SDWA UPDATE, USEPA AMENDMENTS)	R21-10
(July 1, 2020, through December 31, 2020))	
)	
SDWA UPDATE, USEPA AMENDMENTS)	R22-2
(January 1, 2021, through June 30, 2021))	(Identical-in-Substance
)	Rulemaking - Public Water Supply)
)	(Consolidated)

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by J. Van Wie):

SUMMARY OF THIS ACTION

The Board today adopts 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. USEPA took two actions relating to lead in drinking water and granted summary approval to about 17 additional alternative test procedures (ATPs)¹ for analyzing contaminants in drinking water. The Board now adds these provisions to the Illinois drinking water rules.

The Board finds that corrections and revisions not directly based on the present USEPA actions are also needed and adds them to its adopted rule. The most significant pertain to the Radionuclides Rule and removing several rules applicable to unfiltered system suppliers using surface water sources and groundwater under the direct influence of surface water. The Board also adopts stylistic changes, including many of the type ordinarily requested by the Joint Committee on Administrative Rules (JCAR), and corrections to errors in the text.

Finally, for reasons detailed below, the Board extends the adoption deadline from October 1, 2023, to today, October 19, 2023.

Sections 7.2 and 17.5 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/7.2 and 17.5 (2022)) provide for quick adoption by the Board of regulations that are IIS to regulations that USEPA adopts to implement Sections 1412(b), 1414(c), 1417(a), and 1445(a) of the federal Safe Drinking Water Act (SDWA) (42 U.S.C. §§ 300g-1(a), 300g-3(c), 300g-6(a), and 300j-4(a) (2021)). The National Primary Drinking Water Regulations (NPDWRs) implement these sections of SDWA. SDWA regulations are found at 40 C.F.R. 141 through 143.

¹ The Board in the past called these “alternative equivalent methods” based on section 1401(1) of SDWA (42 U.S.C. § 300g-1(1) (2020) (defining “national primary drinking water regulation”). The Board now follows USEPA by referring to them as “alternative test procedures” or “ATPs.”

Section 17.5 of the Act also provides that Title VII of the Act and Section 5 of the Illinois Administrative Procedure Act (APA) (5 ILCS 100/5-35 and 5-40 (2022)) do not apply to the Board's adoption of IIS regulations.

The Board adopted a proposal for public comment on June 1, 2023. A Notice of Proposed Amendments appeared in the *Illinois Register* on July 14, 2023, at 47 Ill. Reg. 9557. The 45-day public comment period ended August 28, 2023. The June 1, 2023 opinion and order found that the Board needed additional time to complete action on the proposed amendments and extended the due date until October 1, 2023.

During the public comment period, the Board received six additional public comments, which are discussed later in this opinion.

In this opinion, the Board first extends the due date for final action on the amendments. Second, the Board addresses the Illinois Environmental Protection Agency (IEPA) motion to file *instanter* an additional public comment. Finally, the Board discusses the public comments received on the proposal for public comment. The text of the Board's adopted amendments is appended to this opinion and order. The Board is assembling and will add to these consolidated dockets an "Identical-in-Substance Rulemaking Addendum (Final)" (IIS-RA(F)) describing textual edits in detail.

EXTENSION OF DUE DATE AND REASONS FOR DELAY

The Board finds it necessary to extend the due date for final Board adoption of amendments from October 1, 2023, to today's date, October 19, 2023.

Under Section 7.2(b) of the Act (415 ILCS 5/7.2(b) (2022)), the Board must complete this rulemaking within one year after the corresponding federal action. Based on the date USEPA approved additional methods, the Board's original deadline to adopt final rules was September 1, 2020.

The Board encountered unanticipated delay in developing this adopted rule because of the volume and complexity of the amendments and public comments received after proposing the rule. Additionally, because of the volume of the proposal, the rules were not published in the *Illinois Register* until July 14, 2023, thus extending the 45-day comment period until August 28, 2023. The Board now adopts the amendments. Therefore, the Board extends the deadline until October 19, 2023, the date of this final order.

Board order proposing amendments:	June 1, 2023
Submission for <i>Illinois Register</i> publication:	June 9, 2023
Estimated <i>Illinois Register</i> publication:	June 23, 2023
Actual <i>Illinois Register</i> publication:	July 14, 2023
Estimated End of 45-day public comment period:	August 7, 2023
Actual End of 45-day comment period:	August 28, 2023
Board order adopting amendments:	October 19, 2023
Estimate of when rules take effect:	October 26, 2023
Estimated <i>Illinois Register</i> publication:	November 3, 2023

IEPA’S MOTION FOR LEAVE TO FILE *INSTANTER AN*
ADDITIONAL PUBLIC COMMENT

On October 3, 2023, IEPA filed a motion for leave to file additional comments *instanter* (IEPA Mtn.) along with the additional comments (PC 8) and proof of email service that day. No one has filed a response to IEPA’s motion. *See* 35 Ill. Adm. Code 101.500(d) (objection to granting motion is waived if no response filed within 14 days after service of motion). IEPA explains that it needs the Board to consider brief additional comments “[d]ue 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 [LCRR] within the State of Illinois.” IEPA Mtn. at 1. The Board grants IEPA’s unopposed motion for leave to file *instanter* its additional comment and accepts IEPA’s comment. However, the Board disagrees with IEPA’s characterization of the Board’s statutory obligation in adopting IIS SDWA rules. PC 8 at 3-4.

IEPA first reiterates that the Board should “adopt verbatim the federal LCRR language in this rulemaking and all other IIS going forward” and that any Board deviation from USEPA rule text “should only be in instances where Illinois is more stringent.” PC 8 at 3-4. IEPA then asks the Board to “adopt the verbatim text of the federal LCRR pursuant to 415 ILCS 5/7.2.” *Id.* at 5. But Section 7.2 of the Act does not require that the Board IIS rules simply mirror USEPA rule text. Section 7.2 defines “identical in substance” as “State regulations which require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois.” 415 ILCS 5/7.2(a) (2022). The Act does state that after considering comments from USEPA, IEPA, the Attorney General, and the public, the Board “shall adopt the verbatim text of such USEPA regulations as are necessary and appropriate for the authorization of the program.” *Id.* But Section 7.2 goes on to provide that when the Board adopts IIS rules, changes that may be made “by the Board to the federal regulations are those changes that are necessary for compliance with the Illinois Administrative Code.” *Id.* As evidenced by the comments received from JCAR, this obligation to make changes to comply with the Illinois Administrative Code is extremely important. *See* PC 3; PC 7. The Board may also make “technical changes that in no way change the scope or meaning of any portion of the regulations.” *Id.*; *see also, e.g.*, 415 ILCS 5/7.2(a)(7) (2022) (other permissible changes correcting “apparent typographical and grammatical errors in USEPA rules”).

As to IEPA's comments regarding how the Board addresses Section 17.12 of the Act (415 ILCS 5/17.12 (2022)) in this rulemaking, the Board appreciates IEPA's concern. Added to the rules adopted today is a Board Note, explained below, reflecting the Board's expectation that IEPA will propose a general rulemaking to effectuate Section 17.12 and appropriately address any inconsistencies between it and the SDWA IIS rules. As IEPA indicated to the Board in March 2023, IEPA anticipates drafting and proposing those rules. *See* PC 1. The Board will consider that proposal when IEPA files it.

USEPA'S COMMENTS

The Board received extensive comments from USEPA, which this opinion and order addresses. Not all of USEPA's suggested changes appear in the final rules, but when they do not, the Board explains why the changes were not made. The Board carefully considered all the comments in these consolidated dockets and proposes for final adoption rules that are "identical in substance" to USEPA's rules, as that term is used in Section 7.2 of the Act.

DISCUSSION

For a discussion of the USEPA actions on which the Board based the proposal for public comment, please refer to the Board's June 1, 2023 opinion.² In that opinion, the Board requested comments on the proposed amendments. The Board specifically requested comment on whether the proposed amendments ensure that Illinois' primary drinking water regulations remain consistent with the national public drinking water regulations (NPDWRs).

The Board received eight comments in this proceeding, including two consisting of email exchanges with IEPA before the proposal was adopted for public comment. JCAR filed PC 3 proposing 278 numbered revisions to the text of the amendments as prepared for publication in the *Illinois Register*. The Board's responses to each of those JCAR suggestions are found in PC 7, an email from the Board to JCAR, attaching the JCAR line-numbered rule text referred to in the exchange. The Board does not reiterate those changes in this opinion.

PC 4 was a joint comment from 15 different environmental, religious and citizens' organizations (collectively, the Groups). The Groups consist of the 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; and the Natural Resources Defense Council. The Groups' comment concerned the lead service line (LSL) replacement requirements of Section

² SDWA Update, USEPA Amendments (July 1, 2020 through December 31, 2020), R21-10 and SDWA Update, USEPA Amendments (January 1, 2021 through June 30, 2021), R22-2 (consol.) (June 1, 2023).

17.12 of the Act (415 ILCS 5/17.12 (2022)). The Groups express concern that some LSL replacement requirements of Section 17.12 vary in stringency from the LSL replacement requirements of the proposed rule amendments.

PC 5, from USEPA, details concerns with the Board's amendments proposed for public comment and suggests numerous revisions it believes will align those amendments with the federal rules. USEPA also suggests correcting typographical errors such as misspellings and intra-rule references. For USEPA's more substantive suggested revisions that the Board does not make, the Board discusses its reasons below.

PC 6 and PC 8 are comments received from IEPA. These comments were similar in nature to USEPA's comments. IEPA asks that the Board's rule text track the exact language of the federal rules and suggests both substantive and non-substantive changes to the proposed rule amendments. Additionally, IEPA expresses concern about some LSL replacement requirements in Section 17.12 of the Act varying in stringency from the requirements in the proposed rule amendments.

The Board has carefully considered these comments. As the respective comments of the Groups, USEPA, and IEPA address concerns regarding Section 17.12 of the Act, the Board addresses that issue first. Then, the Board discusses and explains its reasons for declining to make the more significant changes proposed by USEPA and IEPA.

Section 17.12 of the Act

The interplay of Section 17.12 of the Act (415 ILCS 5/17.12 (2022)) and the rules proposed in this rulemaking was raised by the Groups, USEPA, and IEPA. IEPA indicated to the Board seven months ago that it would propose a general rulemaking implementing Section 17.12 of the Act. *See* PC 1 at 5. Until IEPA proposes and the Board adopts a general rulemaking implementing Section 17.12 of the Act, the potential exists for confusion among the regulated community.

This potential for confusion was noted by the Groups in PC 4. The Groups "do not dispute" that the IIS proposal conforms with USEPA regulations; however, the Groups believe that Section 17.12 of the Act is more stringent than the USEPA regulations. PC 4 at 1. The Groups point to several statutory provisions they believe might be more stringent or create conflict and recommend adding a provision to the Board rules addressing Section 17.12. *See id.* at 4.

USEPA notes that the definition of "lead service line" in the proposal for public comment is different from the definition found in Section 17.12 of the Act. PC 5 at 2. USEPA also notes that provisions in Section 17.12 might be more stringent than the language in proposed Sections 611.354(f) and (g). *Id.* at 29.

IEPA believes that the language of the rule does not account for Section 17.12 of the Act. PC 6 at 1. IEPA also cautions that the entirety of Section 17.12 is not more stringent than the

SDWA rules, and “discourages the Board from identifying which subsections in Section 17.12 of the Act are more stringent than the federal requirements in the LCRR.” PC 8 at 5. IEPA adds that “[t]hrough 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.” *Id.*

The Board is cognizant that the interplay between Section 17.12 of the Act and these rules could confuse people. Therefore, the Board adds the following Board note in Section 611.100:

BOARD NOTE: Generally, Section 17.12 of the Environmental Protection Act (Act) [415 ILCS 5/17.12] concerns lead in drinking water supplies. The Board recognizes that Section 17.12 of the Act might include provisions that are more stringent than some provisions in this Part. Section 17.12(mm) of the Act [415 ILCS 5/17.12(mm)] provides that “[t]he Agency may propose to the Board, and the Board may adopt, any rules necessary to implement and administer this Section [17.12 of the Act].” When the Agency files a rulemaking proposal with the Board under Section 17.12(mm) of the Act, the Board will conduct a general rulemaking to update this Part as appropriate.

The addition of this Board Note makes clear in the rules themselves the Board’s understanding that any discrepancies between Section 17.12 of the Act and Part 611 of the Board’s rules will continue to exist until IEPA proposes, and the Board adopts, appropriate amendments through a general rulemaking under Section 17.12(mm) of the Act. *See* 415 ILCS 5/7.2(a)(6) (2022) (“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.”). Until that time, the Board Note will also serve as notice that the rules must be read in conjunction with Section 17.12 of the Act, which might contain requirements more stringent than some in Part 611. In the meantime, however, the Board must fulfill its statutory IIS mandate by adopting today’s amendments. *See* 415 ILCS 5/17.5 (2022) (“In accordance with Section 7.2, the Board shall adopt regulations which are ‘identical in substance’ to federal regulations or amendments thereto promulgated by the Administrator of the United States Environmental Protection Agency to implement Sections 1412(b), 1414(c), 1417(a), and 1445(a) of the Safe Drinking Water Act (P.L. 93-523), as amended.”).

USEPA Comment (PC 5)

USEPA provides the Board with multiple comments on the proposed rule language. The Board briefly discusses here the changes it has determined are not necessary. The IIS-RA(F) contains a more detailed discussion of all the changes made by the Board, and many of USEPA’s changes are reflected in Table 3 as “Housekeeping Amendments”. Table 5 identifies the USEPA changes not accepted by the Board. In some instances, USEPA appears to have misunderstood the proposed rule text, while in others, more substantive issues arose. The Board details its reasoning in the IIS-RA(F) for declining to make a suggested change. The Board does not

discuss here all changes made in response to USEPA's comments but refers to the IIS-RA(F) for those changes.

One substantive issue USEPA raises as a concern is the Board amending the definition of "small system supplier" to be a CWS (community water supply) that serves 10,000 or fewer persons. USEPA maintains that the definition is inconsistent with the federal rules and that the Board should revert to 3,300 or fewer persons. However, the Board changed the number of persons from "3,300 or fewer persons" to "10,000 or fewer persons" because USEPA did not revise its definition of "small water system" to correspond with amending "medium-size water system". Without this amendment, a supplier serving 3,301 to 10,000 persons is neither a small supplier nor a mid-sized supplier. USEPA's amendments, however, indicate USEPA intended that small water systems include suppliers serving up to 10,000 persons. *See* 40 C.F.R. § 141.81(a)(3) (2021) ("Small water systems (serving \leq 10,000 people)").

USEPA also questions the Board's decision to use the word "or" rather than "and/or" in the proposed text. USEPA asks that the Board replace "or" with "and/or" in several places. The Board declines to make those changes for reasons detailed in the IIS-RA(F). In short, "or" accurately effectuates the requirements while "and/or" would introduce an ambiguity. *See, e.g., In re Marriage of Lima*, 265 Ill. App. 3d 753, 758 (2nd Dist. 1994) ("The combination 'and/or' connects terms without particularity of what it intends to describe. The combination is a deliberate amphibology, susceptible of more than one interpretation and is a purposefully ambiguous expression, useful in its self-evident equivocality.").

In addition, USEPA asks the Board to add rule language that would provide for third-party appeals of IEPA determinations made under Sections 611.352(h) and 611.353(b)(6). Section 611.352(h) allows IEPA to issue a special exception permit (SEP) modifying its determination of the optimal corrosion control treatment, and Section 611.353(b)(6) allows IEPA to issue a SEP modifying its determination of the source water treatment and the lead and copper maximum permissible source water levels. The Board declines to make USEPA's suggested change. USEPA cites no provision of SDWA or the Act that would authorize a third-party appeal to the Board in either of these scenarios. Nor does USEPA cite its own rules either providing this third-party appeal or requiring it as an element of state primacy. It is well settled that if the Act does not expressly provide a third-party right to appeal a final IEPA determination to the Board, the right does not exist. *Landfill, Inc. v. Pollution Control Bd.*, 74 Ill. 2d 541, 557-58 (1978). The Act expressly provides third-party appeals for a handful of IEPA permit determinations (*e.g.*, National Pollutant Discharge Elimination System permits, Prevention of Significant Deterioration permits), but not for either of these IEPA determinations.

Accordingly, consistent with Section 40 of the Act's authorization of permit appeals by applicants (415 ILCS 5/40) (2022)), the Board's rule at Section 602.600(c) on SEPs provides that "[t]he community water supply may appeal the denial of, or the conditions of, a SEP to the Board pursuant to Section 40 of the Act." 35 Ill. Adm. Code 602.600(c). The long-standing statement in the Board's rules at Sections 611.352(h)(4) and 611.353(b)(6)(E) that if an interested person submits information and IEPA determines not to act on the information, the determination "is not an Agency determination for the purposes of Sections 39 and 40 of the

Act” is simply a truism. The Board expresses no opinion on whether the interested person could seek circuit court review under the Administrative Review Law (735 ILCS 5/3-101 et seq. (2022)). However, as 40 C.F.R. § 141.82(i) provides for review of section 141.82(h) determinations, the Board’s rule at Section 611.352(i) likewise states that under 40 C.F.R. § 142.19, USEPA reserves the prerogative to review IEPA optimal corrosion control treatment determinations made under Section 611.352(h). And as 40 C.F.R. § 141.83(b)(7) provides for review of section 141.83(b)(6) determinations, the Board’s rule at Section 611.353(b)(7) likewise states that under 40 C.F.R. § 142.19, USEPA reserves the prerogative to review IEPA treatment determinations made under Section 611.353(b)(6).

Next, for the construction cut-off date in Section 611.362, USEPA asks that the Board use the date on which the Board adopted a specified definition of “lead-free” if that adoption date was earlier than 2014. Specifically, USEPA’s section 141.92 requires all community water systems to conduct directed public education and lead monitoring at the schools and child care facilities they serve if those schools or child care facilities were constructed “prior to January 1, 2014 or the date the State adopted standards that meet the definition of lead free in accordance with Section 1417 of the Safe Drinking Water Act, as amended by the Reduction of Lead in Drinking Water Act, whichever is earlier.” 40 C.F.R. § 141.92 (emphasis added). For its construction cut-off date, the Board’s corresponding proposed rule at Section 611.352 refers only to “constructed prior to January 1, 2014”. The Board does not use an earlier date because the Board adopted the specified standards meeting the “lead-free” definition (35 Ill. Adm. Code 611.236), effective April 17, 2020, *i.e.*, after January 1, 2014. See 44 Ill. Reg. 6996, 7231-32 (May 1, 2020). The Board therefore leaves the phrase “constructed prior to January 1, 2014” in Section 611.362.

Finally, USEPA notes that the Board’s proposal does not include a provision corresponding to 40 C.F.R. § 141.84(c)(6), which concerns circumstances under which specified operating procedures for replacing lead goosenecks, pigtails, or connectors do not apply. The Board finds, however, that the adoption of Section 17.12 of the Act (415 ILCS 5/17.12 (2022)) obviates the need for additional corresponding rule language. Specifically, Section 17.12 of the Act satisfies the conditions of section 141.84(c)(6) because it is a “state law” that “includes lead connectors in the definition of lead service lines, prohibits partial lead service line replacements, and requires systems to remove all lead service lines irrespective of a system’s 90th percentile lead level.” 40 C.F.R. § 141.84(c)(6).

IEPA’s Comments (PC 6 & 8)

In both its comments, IEPA argues that the Board must adopt the federal rules “verbatim”. As discussed above, the Board follows the procedures set forth in Section 7.2 of the Act (415 ILCS 5/7.2 (2022)) when adopting IIS rules. The Board finds that the amendments adopted today comply with the IIS mandate. IEPA also asserts that some of the proposed rules are inconsistent with the federal rules, and where IEPA identifies those Board rules, the Board addresses IEPA’s concerns. For more details, please refer to the IIS-RA(F).

The Board first notes that IEPA proposes a change to Section 611.490. Because Section 611.490 is not currently open in this rulemaking, the Board makes no change.

IEPA, like USEPA, seeks a change of “or” to “and/or” in several rules. For the reasons discussed above, the Board declines to make those changes. In Section 611.363(a)(3)(D), however, the Board clarifies that if a site exceeds the lead trigger level, the supplier must contact “the homeowner or building manager or, if applicable, both no later than 24 hours after receiving the tap sample results.” In imposing this affirmative obligation on the supplier, the Board declines to use the ambiguous “and/or” (*i.e.*, homeowner and/or building manager), which would be susceptible to an interpretation that the supplier may notify both *or either one*. The Board makes the same change in Section 611.360(j)(1).

Next, IEPA asks why the Board omitted from subsection (h)(1) of Section 611.352 the “or other interested party” language of 40 C.F.R. § 141.82(h) (“Upon its own initiative or in response to a request by a water system *or other interested party*, a State may modify its determination of the optimal corrosion control treatment under paragraph (d) of this section, or optimal water quality control parameters under paragraph (f) of this section.”) (emphasis added). The Board omitted the language because it is covered by subsection (h)(4) of Section 611.352, the first sentence of which provides that any interested person may submit information to IEPA bearing on whether IEPA should exercise its discretion and issue a SEP modifying its determination under subsection (h)(1) of Section 611.352. Further, the text of subsection (h)(1) of Section 611.352 (“On its own initiative or in response to a request by the supplier, the Agency may . . .”) is consistent with the general rule on SEPs: “A SEP may be initiated in either of the following ways: 1) by a written request from the community water supply; or 2) by the Agency, when authorized by Board regulations.” 35 Ill. Adm. Code 602.600(d).

IEPA also raises the issue of the Board rules using the word “including” instead of “including but not limited to”. The Board has addressed this issue in the past, concluding:

the phrase “but not limited to” is unnecessary. Striking the phrase does not alter the meaning of the rules and does not limit IEPA to the examples listed. If, for example, IEPA needs to request information beyond the examples after “including,” it is not foreclosed from doing so. The Board declines to follow IEPA’s recommendation, and its first-notice order below continues to strike the phrase “but not limited to.” Amendments to 35 Ill. Adm. Code Subtitle D, R18-24 (Mar. 28, 2019).

IEPA provides no legal argument that convinces the Board to alter its position. The Board continues to find that the legalese “but not limited to” is surplusage and that simply using the word “including” conveys the intended meaning. The Board disagrees with IEPA that using “including” rather than “including but not limited to” makes the Board rules inconsistent with the federal requirements. *See, e.g., People v. Perry*, 224 Ill. 2d 312, 328 (2007) (“including” “when followed by a listing of items, means that the preceding general term encompasses the listed items, but the list is not exhaustive”).

IEPA questions the Board's use of language and intra-rule references. Regarding IEPA's question on Section 611.363 language, the Board keeps the change from "alternatives" to "flexibility options" to align the Section 611.363 preamble with the section header. IEPA also questions why Section 611.363(a)(4) cites to Section 611.126(c) of the rule rather than SDWA. The Board cites to the section of the Illinois Administrative Code because it is a more specific cite consistent with SDWA.

IEPA further suggests the Board correct a reference to rule Section 611.356(d)(1) found in Section 611.360(a)(1)(E). IEPA believes it should cite to Section 611.356(d)(1)(A) to be consistent with federal language. However, the citation to Section 611.356(d)(1) reflects existing federal language. The Board therefore disagrees that there is any inconsistency and makes no change.

IEPA next questions whether the "voluntary school and child care program lead testing grant" in Section 611.362(d)(1)(D) of the rules is the only type of grant specified in section 1464(d) of SDWA, but does not propose a change or explain why the Board's changes are problematic or how they impact the approvability of the rules. As noted in the IIS-RA(F), the Board specifies this type of grant in its rules to reflect the corresponding subsection title in SDWA. The Board does not intend for the specification to narrow the scope of the federal requirement. The Board believes the rule language as proposed in Section 611.362(d)(1)(D) is consistent with the federal requirements and makes no additional change.

IEPA also asks that the Board describe which specific subparts of Section 611.840 of the rule meet the specific federal requirements in 40 C.F.R. §§ 141.31(d)(1) and (d)(2). The Board rule specifies the requirements derived from 40 C.F.R. § 141.31(d)(1) at Section 611.840(d)(1), and specifies the requirements derived from 40 C.F.R. § 141.31(d)(2) at Section 611.840(d)(2). The Board finds that no additions to this rule language are needed and makes no change.

Similarly, IEPA comments that the Board did not include state equivalents to certain sections of the C.F.R., but does not identify missing federal requirements from the rule text. The Board has chosen not to adopt a state equivalent of certain federal C.F.R. sections where the existing text satisfies the requirements of state and federal law. As IEPA does not explain why the absence of state equivalent sections is problematic in these cases or how it impacts the approvability of the rules, the Board makes no additional change.

Finally, IEPA notes that the Board did not include a state equivalent to 40 C.F.R. § 141.42(d) and deleted the rule derived from 40 C.F.R. § 141.43. However, as the Board Note to Section 611.356(a)(2) explains, because suppliers completed identifying and reporting construction materials in their distribution systems under 40 C.F.R. § 141.42(d), the Board omitted this requirement from its rules. And USEPA removed section 141.43 of 40 C.F.R. 85 Fed. Reg. 54235, 54256 (Sept. 1, 2020). Again, as IEPA does not explain why the Board's changes are problematic or how they impact the approvability of the rules, the Board makes no additional change.

ORDER

The Board directs the Clerk file the adopted amendments with the Office of the Secretary of State and provide notice in the *Illinois Register* of the appended adopted amendments to the Illinois primary drinking water regulations.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 19, 2023, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is centered on the page.

Don A. Brown, Clerk
Illinois Pollution Control Board