

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) R15-23
AMENDMENTS TO PRIMARY DRINKING)
WATER STANDARDS) (Rulemaking-Water)
35 ILL. ADM. CODE 611)

NOTICE OF FILING

PLEASE TAKE NOTICE that I have electronically filed today with the Illinois Pollution Control Board ILLINOIS EPA's RESPONSE TO BOARD QUESTIONS for the above captioned rulemaking, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/Joanne M. Olson
Joanne M. Olson
Assistant Counsel
Division of Legal Counsel

DATED: July 28, 2015

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THIS FILING IS SUBMITTED ON RECYCLED PAPER

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ILLINOIS EPA's RESPONSE TO BOARD QUESTIONS

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA" or "Agency"), by one of its attorneys, and respectfully responds to questions raised by the Illinois Pollution Control Board ("Board") in its July 16, 2015 Opinion and Order. The Illinois EPA states as follows:

1. Illinois EPA filed the instant rulemaking on May 20, 2015. Included in the rulemaking proposal was a motion for an emergency rulemaking.

2. On June 9, 2015, hearing dates were set for July 30, 2015 and August 19, 2015. For the July 30, 2015 hearing prefiled testimony was due July 2, 2015, and prefiled questions were due July 16, 2015.

3. The Illinois EPA hereby submits the attached questions and responses to the Board's questions:

- a) IEPA proposes to add Section 611.858 consisting of a secondary standard for fluoride. IEPA notes Section 611.858 was repealed in a prior rulemaking. SR at 4-IEPA further notes that Sections 611.901, 611.904, and 611.908 include references to the repealed Section 611.858. SR at 5. Secondary standards relate to aesthetic qualities of water and are not federally enforceable standards. 40 CFR 143.1. Board regulations do not include these secondary standards. However, enforceable primary standards require public notice when there is an exceedance of the secondary standard for fluoride. 40 CFR 141.208. Rather than adding Section 611.858 as proposed by IEPA, comment on instead removing the references to Section 611.858 in the public notice provisions found in Sections 611.901, 611.904, and 611.908. For example, Section 611.901(a)(3)(C) would be amended as follows and similar revisions made to Sections 611.904 and 611.908:

~~An~~ The notice required by Section 611.208 for an exceedance of 2 mg/1 fluoride (the federal secondary MCL for fluoride standard of Section 611.858 (see 40 CFR 143.3)).

Illinois EPA's Response: The Illinois EPA considers the removal of references to Section 611.858 in Sections 611.901, 611.904, and 611.908 as a solution as equally viable as re-addition of the previously repealed Section 611.858.

- b) Comment on making the above revisions through a future rulemaking under the Board's identical in substance rulemaking authority set forth in Section 17.5 of the Environmental Protection Act.

Illinois EPA's Response: The Agency believes that because the revision is a correction of a previous error, and because First Notice of the proposed amendments has been published in the Illinois Register it is prudent to complete the change now rather than through a future rulemaking.

- c) In IEPA's response to Board Question (e) in the June 4, 2015 Opinion and Order, IEPA stated, "Given that the fluoride requirement itself is not a health-based standard, no impacts as described would result." PC 5 at 3. In the Statement of Reasons, IEPA explained that the proposed revision to the Board's fluoride standard is based on the statutory requirement at 415 ILCS 40 for the Illinois Department of Public Health (IDPH) to promulgate rules requiring the addition of fluoride based on recommendations of the U.S. Department of Health and Human Services (HHS). SR at 1. Would you please clarify why the fluoride requirement in the Board's rules is not a health-based standard and if it is solely a requirement based on the statutory requirement for IDPH.

Illinois EPA's Response: The Illinois EPA states that, because it must permit the installation and operation of community water supplies, which include plants adding fluoride, the Board should have the standard in its regulation. The standard is not health based, but rather its basis is in the interest of safety of chemical addition as any consideration of health was already made by the legislature when the statute was created [415 ILCS 40/7a]. The Agency also asserts that the standard in the Board's regulation is not based solely on the statutory requirement

for the Illinois Department of Public Health. "This rule reinforces the existing law requiring fluoridation of public water supplies. The Environmental Protection Agency will by this rule cooperate with the Public Health Department, and by its field personnel insure proper operation of equipment and enforcement of the rule." R1973-13, Opinion of the Board at 38 (January 3,1975).

WHEREFORE, the Illinois Environmental Protection Agency respectfully submits these Responses to the Board.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/Joanne M. Olson
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Assistant Counsel
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CERTIFICATE OF SERVICE

Joanne M. Olson, Assistant Counsel for the Illinois EPA, herein certifies that she has served a copy of the foregoing NOTICE OF FILING; and ILLINOIS EPA's RESPONSE TO BOARD QUESTIONS upon persons listed on the Service List by placing a true copy in an envelope duly addressed bearing proper first class postage in the United States mail at Springfield, Illinois on – July 28, 2015.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/Joanne M. Olson
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Assistant Counsel
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