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August 19, 2019

Barbara Flynn Currie, Chairperson
Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago IL 60601

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AUG 21 2019

STATE OF ILLINOIS
Pollution Control Board

RE: Primary Drinking Water Standards (35 IAC 611; proposed 42 Ill. Reg. 14663; adopted at 43 Ill. Reg. 8206)

Dear Chairwoman Currie:

In closing the above referenced file, JCAR Staff discovered several errors in the Commission's filed rulemaking, both in the Register version and the Code version. Many of these errors appear to result from PCB's use of incorrect background text when it proposed and adopted this rulemaking. The background used does not match PCB's adopted text from a large 35 IAC 611 rulemaking adopted on 1/4/18, and a second, smaller intervening adopted on 5/29/18. The result is that PCB, with this new 7/26/19 adoption, adopted text made obsolete by these 2 interventions, with the added concern that it did so without going through the process that makes amendatory changes legal (i.e., showing strikes and underlines in the Register version). The Delta copies (the JCAR text comparison program copy that JCAR sends the agency to highlight any differences between agency prepared text and JCAR prepared text) should have indicated the differences in existing IL Administrative Code text and the PCB background text. However, this was an extremely large rulemaking with many changes that was adopted at the same time as 4 other PCB rulemakings, which could have resulted in your staff not recognizing the background text problems. Regardless of the reason this has occurred, the result is that PCB has adopted text that was created without use of the prescribed process.

Also, a few of the issues listed in this letter result from problems not related to the background text issue. We have applied an * to those. Those without the * were correct in prior text, not changed by legal process, but were changed in the adopted version.

The following are the problems we have discovered:

1. Table of Contents
 - a. *Subpart P header: Under SOS rules, the only way to repeal a Subpart is via a

recodification. The Subpart remains even when all Sections within it have been repealed. JCAR Staff would be happy to set up a recodification you could file to remove Subpart P if you like. Otherwise, the header should not include "(Repealed)".

- b. Secs. 611.908 and 611.909: "Exceedance" and "Exceedances" are misspelled. They were correctly spelled in what should have been shown as the existing (5/29/18) text.
 - c. *611.1010: The last 2 words should probably be "Filtered Systems" not "Filtered Suppliers". This applies to the actual Sec. 611.1010 as well as the TOC. Sec. 611.1010 is not amended in this rulemaking. This issue could be addressed the next time you open that Section.
2. Source Note: Your entry for R12-4 contains a redundant "36 Ill. Reg."
 3. *611.101
 - a. Disinfectant: "but not limited to" disappeared without an Agreement to strike it. JCAR agrees with this change on a substantive level, but it must be done via the correct procedures.
 - b. Disinfectant byproduct: Same as 3a except that the term is ", but is not limited to,".
 - c. Significant deficiency: Same as 3b.
 - d. Treatment: See 3b.
 4. *611.121(b): In the Code pages, the "of" before "narrative standard" is marked as stricken. It should only be stricken in the Register version; the Code version shows the text resulting after the removal.
 5. 611.261:
 - a. 1st sentence: An existing comma after "Section" disappeared without process.
 - b. (e): this subsection has a period at the end, contrary to recent PCB, and normal IAC, style. This occurs throughout the Part and should be addressed in the future.
 6. 611.300(d)(1) through (3): The closing semicolons disappeared and were replaced with commas, both without process. 4 semicolons is preferred.
 7. 611.350(b).
 - a. Exceed: The comma was moved inside the quotes. Please put nothing inside the quotes but the term being defined.
 - b. Meet: Same as 7a.
 - c. Monitoring Period, Board Note: The punctuation after "monitoring periods" and "compliance period" should be outside the quotes. Good in 1/4/18.
 - d. Multiple-family residence: The final period should be outside the quotes.
 8. 611.351(e)(4): A closing parenthesis is omitted at the end of the sentence: It should be "(subsection (e)(3))".
 9. 611.353(b)(6)(A): "of this Section" was added after "(b)(2)" without process.

10. 611.354
 - a. (d)(1)(C), last sentence: "after" was replaced by "of".
 - b. (d)(1)(D): "after" was replaced by "of" and the period was moved inside the quotes.
11. 611.355(b)(3)(A): The existing comma after (b)(2)(B) disappeared.
12. 611.356
 - a. (a)(3)(B)(i): "which" before "contain lead pipes" disappeared.
 - b. (g)(1)(A)(ii), Board Note., 1st sentence: The period was moved inside the quotes.
13. 611.360
 - a. (a)(1): "after" was changed to "of".
 - b. (a)(1)(C), 1st sentence: The period was moved inside the quotes.
 - c. (b)(1): "after" was changed to "of".
14. 611.381(d), 1st sentence: "in this subsection (d)" was changed to "below".
15. 611.531
 - a. (a)(2)(D)(vi) & (ix): "nephelometry" (correct in existing text) was misspelled ("nephelomtry").
 - b. (a)(2)(D), Board Note, last sentence: "Lovibond PTV 1000" was mistakenly rendered "Lovibond PTV 100".
 - c. *(b)(5): existing text "pursuant to Section 611.110" disappeared without process.
16. *611.533(c), Board Note: The CFR reference was changed from 2016 to 2014 without process.
17. 611.603(d): New subsection (d)(3) is shown as existing text here. It was not existing and was not added by process.
18. 611.646(g), Board Note, last sentence: The comma was moved inside the quotes.
19. 611.648:
 - a. Subsection (a), Detection Limit, Board Note, last sentence: The period was moved inside the quotes.
 - b. (r)(2): The hyphen was removed from Di(2-ethylhexyl)phthalate.
20. 611.732(f): "exceedance" was misspelled ("exceedence").
21. *611.733(c)(3): "of this Section" was stricken, resulting in "under the provisions and Sections 611.731 and 732".
22. 611.800(c)(5), Board Note: "of this Part" disappeared; it should remain.
23. 611.801(b), 1st sentence: The comma was moved inside the quotes and "but is not limited

to," disappeared.

24. 611.803
 - a. (a)(3): This subsection erroneously refers to "this subsection (b)".
 - b. (a)(4): ", but are not limited to," disappeared without process.
 - c. (b)(3): The comma after "(b)(1)" disappeared without process.
25. 611.804
 - a. (a): An existing "after" was replaced by "of".
 - b. (a)(1): "; or" was replaced by ", or".
 - c. (b)(1): "; or" was replaced by ", or".
 - d. (d): The comma after "(b)" disappeared without process.
26. 611.883, (d)(4)(D) Board Note: Existing "A" after "Appendix" disappeared.
27. 611.885(b): ", but is not limited to," disappeared without process.
28. *611.924(b): "samples" was added after "standard monitoring" and "system-specific study" without process.
29. 611.955(c)(2): The period was moved inside the quotes improperly and without process.
30. 611.1001(a)(5): The comma after "(a)(4)(B)" disappeared without process.
31. *611.1002(a)(2)(A), last line: After "USEPA", existing text "electronically" disappeared. PCB's adoption Register struck the website address but not "electronically".
32. 611.1016(a): After "program that meets the requirements", "of this Section" disappeared.
33. 611.1019(a)(8): Existing "after" was replaced by "of".
34. 611.1053(c)(2): "24 hours after" was replaced by "24 hours of".
35. 611.1055(d)(2), 1st sentence: The period was moved inside the quotes.
36. 611.APPENDIX G, A.2b, last column: After "611.1060(c)", a comma is underlined in the Code file pages. Nothing should be underlined in the Code version.

These technical errors should be corrected as soon as possible. The IAPA includes the following as kinds of errors that can be cured through the Expedited Correction process: (1) omission of existing or inclusion of previously repealed Illinois Administrative Code text (this means incorrect depiction of legally created background text) and (2) any discrepancies between adopted rule text and Agreements certified by JCAR during the 2nd Notice period. (This could include changes you showed in the adopted Register version as underlined/stricken that did not appear that way in the original proposal, in 1st Notice Changes, or in JCAR Agreements. This would allow you to back out any changes you intentionally wanted to make in this rulemaking but did so without going

through correct rulemaking processes. You could then make those changes in your next 611 rulemaking.)

I have spoken to Richard McGill of PCB Staff about these issues and know that your staff is as interested as JCAR in getting these problems corrected as soon as possible. If we can be of any assistance in correcting these problems, please contact me at (217)785-2254.

Sincerely,

A handwritten signature in cursive script, appearing to read "Vicki Thomas".

Vicki Thomas
Executive Director

VT:JE:cw

cc: Richard McGill