

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 )  
AMENDMENTS TO 35 ILL ADM. CODE ) R18-26  
SUBTITLE F: PUBLIC WATER ) (Rulemaking- Public Water Supply)  
SUPPLY )

**NOTICE OF FILING**

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board ILLINOIS EPA'S POST HEARING COMMENTS, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/Stefanie N. Diers  
Stefanie N. Diers  
Assistant Counsel  
Division of Legal Counsel

Date: January 28, 2022

Stefanie N. Diers  
Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 N. Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-5544

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 )  
AMENDMENTS TO 35 ILL ADM. CODE ) R18-26  
SUBTITLE F: PUBLIC WATER ) (Rulemaking- Public Water Supply)  
SUPPLY )

**ILLINOIS EPA'S POST HEARING COMMENTS**

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, ("Illinois EPA" or "Agency") by and through its counsel, submits the following post hearing comments in the above captioned rulemaking.

**I. Introduction**

On January 10, 2018, the Agency proposed revision to Subtitle F. The revisions proposed were clean-up amendments to remove obsolete, repetitive, confusing or otherwise unnecessary language only. The Board also stated in its Order of June 17, 2021, they too were reviewing its rules to identify obsolete, repetitive, confusing, or otherwise unnecessary language. In its June 17, 2021 Order, the Board proposed additional amendments to Subtitle F and asked several questions concerning the Agency's proposal. The Agency filed responses to the Board's questions on November 16, 2021. The Agency is now providing general comments to the changes proposed by the Board. The Agency based its review of the Board's proposal by reviewing the language proposed and focusing only on obsolete, repetitive, confusing or otherwise unnecessary and non-substantive changes. The Agency did not propose and does not support any substantive changes to Subtitle F at this time.

## II. Proposed Amendments by the Board

In its June 17, 2021 Order, the Board also proposed to remove obsolete, repetitive, confusing or otherwise unnecessary rule language. The Agency believes that some of the Board's proposed amendments go beyond what the Agency proposed, leads to confusion or changes the meaning of the Sections, and therefore should not adopted at this time. The Agency provides the following comments with respect to the amendments proposed by the Board:

### Part 601

**Section 601.101(b)(3)**- The Agency notes that there are secondary MCLs listed for Copper and Silver which exceed health based values. The concentration of copper in water should not exceed 0.5 mg/L for safe consumption by livestock. The concentration of silver in water should not exceed 0.019 mg/L for safe consumption by humans. The Agency proposed these concentrations for the Class I groundwater standards for these constituents in the recent Part 620 rulemaking filed with Board on December 8, 2021. See R-22-18.

### **Section 601.104 Analytical Testing**

- a. To determine compliance with the community water supplies rules and regulations (35 Ill. Adm. Code.Subtitle F), all sampling, monitoring and testing must shall be made according to the methods described in 35 Ill. Adm. Code 611, the National Primary Drinking Water Regulations (40 CFR 141), **and** any other method specifically approved by the Agency.

The word "and" should be changed to "or" as the intent is not to require monitoring according to all of the cited rules in all instances.

**Section 601.101(b)(3)** – The Agency disagrees with the strikeouts proposed by Board. The strikeouts changes the meaning significantly.

**Section 601.102(b)(1)** – The Agency proposes to add the following: "and 604".

**Section 601.102(b)(4)** – The Agency proposes to add the following: "Part 604 contains design, operation, and maintenance criteria for community water supplies".

**Part 602**

**Section 602.118(b)** – The Agency disagrees with striking “shall” and changing it to “must”. It is the Agency’s position that “shall” is the proper term to have in this Section and “shall” is consistent with other sections of the Board’s rules.

**Part 603**

The Agency has no comment with respect to Part 603.

**Part 611**

This Section contains a statutory reference to variances as Sections 35 through 37 of the Act. The variance provisions of the Act extend to Section 38. The Agency proposes to replace Section 37 with Section 38.

**The Agency agrees with this change.**

***Section 611.312 Maximum Contaminant Levels (MCLs)for Disinfection Byproducts (DBPs)***

The Agency proposes to delete Section 611.312(b )(1), because this provides for calculating disinfection-by-products as a running annual average; this has been replaced by Section 611.312(b)(2) and Subpart Y - Locational running annual average compliance.

**The Agency agrees with this change.**

In Section 611.312(b)(2)(A), the Board references Section 611.980(c). This Section does not exist. The Agency believes the correct reference is to Section 611.970( d). Therefore, the Agency proposes to correct the cross reference.

**The Agency agrees with this change.**

***Section 611.325 Microbiological Contaminants***

The Agency is proposing to delete subsections (a) and (d) since these are now outdated based on the updated Total Coliform Rule that became effective on April 1, 2016.

**The Agency agrees with this change.**

*Repeal of Sections 611.521 to 611.528 and Table A*

The Agency is proposing to repeal these Sections. The Agency has determined this is repeated or extraneous information that is now addressed in the Revised Total Coliform Rules in Subpart AA. These deletions should help with confusion that is caused by the current regulatory language.

**The Agency agrees with this change.**

**Section 611.591 Violation of a State MCL:** The Agency did propose to repeal this Section since it is outdated. However, after further review, **THE AGENCY DOES NOT WANT THIS SECTION REPEALED.** Illinois **must** retain the State MCLs for manganese, iron and zinc for PWS serving populations >1000 persons or >300 service connections. The health advisories for manganese in particular, contain substantial potential risks to adults, children, and infants based on recent studies.

Also, the Agency is in the process of doing updates to 611 and hope to have something to the Board within the next year. The Agency requests any other revisions and updates to Part 611 be addressed in a future rulemaking.

Finally, most of the strikeout changes the Board proposes changes word such as “shall” to “must” and using “under” instead of “pursuant”. The Agency did not propose such changes and believes these words should be left as is. By changing the words, the Board could inadvertently change the context of the regulatory language and it also provides inconsistency in Title 35.

**Part 615**

The following incorporations by reference should be made consistent with the Part 620 proposal what was filed with the Board on December 8, 2021. See R-22-18

**Section 615.102 Definitions**

The following **definitions** should be made consistent with the Part 620 proposal:

**"Detection" means the identification of a contaminant in a sample at a value equal to or greater than the:**

"Method Detection Limit" or "MDL", means the minimum concentration of a substance that can be measured as reported with 99 percent confidence that the true value is greater than zero, pursuant to 40 CFR 136, appendix B, which means the minimum concentration of a substance that can be measured as reported with 99 percent confidence that the true value is greater than zero pursuant to 56 Fed. Reg. 3526-3597; incorporated by reference at Section 615.103; or

"Method Quantitation Limit" or "MQL", which means the minimum concentration of a substance that can be measured and reported pursuant to "Test Methods for Evaluating Solid Wastes, Physical/ Chemical Methods", incorporated by reference at Section 615.103.

"Practical Quantitation Limit" or "PQL" means the lowest concentration or level that can be reliably measured within specified limits of precision and accuracy during routine laboratory operating conditions in compliance accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, incorporated by reference at Section 615.103.

**Section 615.103 Incorporations by Reference:**

a) The Board incorporates the following material by reference:

CFR (Code of Federal Regulations). Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (202) 783-3238.GPO. Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20401, (202)783-3238:

Method Detection Limit Definition, appendix B to Part 136, 40 CFR 136 (2017).  
49 CFR 173 (2017).

National Primary Drinking Water Regulations, Final Rule, 56 Fed. Reg. 3526-3597 (January 30, 1991). Shippers-General Requirements for Shipments and Packaging, 49 CFR 173 (1990)  
NTIS. National Technical Information Service, 5285 Port Royal Road, Springfield VA 22161, (703) 605-6000(703)487-4600

"Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods", EPA Publication No. SW-846, as amended by Updates I, II, IIA, IIB, III, IIIA, and IIIB I, (Doc. No. 55-001-00000-1) (available on line).PB 89-148076).

**Section 615.463-** The word "first" is misspelled in this Section 615.463 and should read:

"This section applies six months after the date of **first** applicability to for a waste pile not subject to Section 615.462.

**Part 616**

**Section 616.205(e)**- The Board has proposed to delete “but not limited to” from subsection 616.205(e), thereby making 616.205(e)(1) and (2) the only conditions under which a groundwater monitoring program can be modified, which is not acceptable. It would be acceptable to say “...no longer satisfies the requirements of this Section, Section 616.207 or Section 616.208...” However, subsections 616.205(e)(1) and (2) need to remain within Section 616.205. This is a substantive change to the regulatory language and the language is needed in case the Agency needs more information. Therefore, this change should not be deleted as proposed by the Board.

**Subsections 616.205(e)(2)** contains a typographical error, the Agency notes that the “s” should be stricken from the first “points”. It should read as follows:

- 2) A redetermination of groundwater flow rate and direction conducted under subsection (d) shows that the existing monitoring system is not capable of assessing groundwater quality at the compliance points or points.

**Section 616.207**, all references to the PQL should be taken out and should refer instead to the LLOQ or LCMRL, since the incorporations by reference should also be updated to match the Agency’s Amendments to Part 620 that was filed with the Board on December 8, 2021. See R-22-18.

**Section 616.207**- If the Board is reviewing all of the 600 series, Section 616.207 should be modified to eliminate the prescriptive method of calculating background. The method is the Student’s T Test, which assumes a normal distribution of data. It would be more appropriate to refer to the 2009 Unified Guidance as does the Part 620 proposal. This Section should be modified to incorporate some subsections similar to Part 845.640(f) and (g). This comment is not an absolute requirement, but it would make the calculation of background under Part 616 a more appropriate process.

**Section 616.445(b)**-There is a typo in subsection 616.445(b), the Board failed to remove “it” with their proposed change. It should read as follows:

- b. During operation, ~~While~~ a surface impoundment is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

### **Part 617**

**Subsections 617.220(b) and (c)**- It does not make sense to the Agency to delete Section 617.215, because this makes a reference to registration for and attendance of Agency training relative to September 1, 2001, which was required in Section 617.215, and subsection (c) requires a CSMP within 180 days of the training, for which the context has been deleted as proposed by the Board.

The Agency also suggest the following:

Section 617.225(c)- The owner or operator of an existing potential tertiary source of groundwater contamination located wholly or partially within the regulated recharge area must, within 180 days after the training required ~~under pursuant to~~ Section 617.225, develop a CSMP and make it available on-site.

### **Part 618**

With respect to comments for Part 618, see the Agency's response to Board Question #6 filed with the Board on November 16, 2021.

### **Part 620**

The Agency recently filed a rulemaking with respect to Part 620 with the Board on December 8, 2021. See R 22-18. The Agency did not propose changes to Part 620 when it filed its proposal in January 2018. Therefore, any changes to Part 620 should be addressed in the current rulemaking filed in December 2021 and no revisions to Part 620 should be addressed in this current rulemaking.

### **General Comment to the changes proposed by the Board**

Most of the strikeout changes the Board proposed changes words such as "shall" to "must" and using "under" instead of "pursuant". The Agency did not propose such changes and believes these words should be left as is. By changing these words, the Board could inadvertently change the context of the regulatory language and it also provides inconsistency in Title 35.



**Follow up response to questions asked at the January 2022 hearing**

Agency witnesses were asked if the proposed changes were sent to United States Environmental Protection Agency (USEPA) prior to filing with the Board in 2018 and would the Agency be sending the adopted rules to USEPA for approval. IEPA believe the proposed changes were not sent to USEPA prior to 2018 filing with the IPCB. Also, USEPA has informed IEPA that if the changes adopted by the Board are truly non-substantive, then USEPA would not need to approve the adopted rules.

WHEREFORE, the Agency respectfully requests the Board accept IEPA's Post Hearing Comments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/Stefanie N. Diers  
Stefanie N. Diers  
Assistant Counsel  
Division of Legal Counsel

January 28, 2022

1021 N. Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-5544

**CERTIFICATE OF SERVICE**

Stefanie N. Diers, Assistant Counsel for the Illinois EPA, herein certifies that she has served a copy of the foregoing NOTICE OF FILING and ILLINOIS EPA'S POST HEARING COMMENTS upon persons listed on the Service List, by electronic service on sent to the email addresses designated below on January 28, 2022.

/s/Stefanie N. Diers  
Stefanie N. Diers

**SERVICE LIST**

Don Brown, Clerk  
Illinois Pollution Control Board  
100 W. Randolph, Suite 11-500  
Chicago, Illinois 60601  
[Don.brown@Illinois.gov](mailto:Don.brown@Illinois.gov)  
(electronic filing)

Vanessa Horton, Hearing Officer  
Illinois Pollution Control Board  
100 W. Randolph, Suite 11-500  
[Vanessa.horton@illinois.gov](mailto:Vanessa.horton@illinois.gov)  
(electronic filing)

Renee Snow, General Counsel  
Illinois Department of Natural Resources  
One Natural Resources Way  
Springfield, Illinois 62702  
[Renee.Snow@illinois.gov](mailto:Renee.Snow@illinois.gov)  
(electronic filing)

Nancy J. Tikalsky, Assistant Attorney.  
General  
Office of the Attorney General  
69 West Washington St., Suite 1800  
Chicago, Illinois 60602  
[Nancy.Tikalsky@ilag.gov](mailto:Nancy.Tikalsky@ilag.gov)  
(electronic filing)

Melissa S. Brown  
HeplerBroom, LLC  
4340 Acer Grove Drive  
Springfield, Illinois 62711  
[Melissa.brown@heplerbroom.com](mailto:Melissa.brown@heplerbroom.com)  
(electronic filing)