

Mike McCambridge - 35 IAC 611

From: "Connelly, Deborah" <connelly@ilga.gov>
To: "Mike McCambridge" <mccambridge@ipcb.state.il.us>
Date: 8/19/2008 12:23 PM
Subject: 35 IAC 611

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Mike:

STATE OF ILLINOIS
Pollution Control Board

In 357(e)(2)(B) you reference (g)(4)(C)(i) and (g)(4)(C)(iii) of this Section but Section 357 has no subsection (g). What would you like us to change it to? Vicki is going to try to rework (e)(2)(B)(i)-(iv) so that it's less awkward, unless you have suggestions. The Board Notes at the end of most of the Sections reference 10/12/07 but the Notice Pages reference 10/10/07. Which is correct? I'm taking the afternoon off but will be in tomorrow.

Thanks

dc

From: Mike McCambridge
To: Connelly, Deborah
Date: 8/19/2008 2:50:01 PM
Subject: Re: 35 IAC 611

1. Errors in subsection numbers referenced in 611.357(e)(2)(B):

In 611.357(e)(2)(B), it should appear as "that has fulfilled the conditions of subsections (e)(2)(B)(i) through (e)(2)(B)(iii) of this Section, subject to the conditions of subsection (e)(2)(B)(iv) of this Section." The references to subsections (g)(4)(C)(i), (g)(4)(C)(iii), and (g)(4)(C)(iii) were errors that I have marked for correction in my working copy of the amendments.

The only explanation I can find for the errors was that I likely glanced at the wrong part of page 57818 in the *Federal Register* notice from which I was working. There are amendments to (g)(4)(i) and (g)(4)(iii) (of section 141.86) at the top of the column that includes the amendments to 141.57(e)(2)(i) and (e)(2)(ii). (This explanation is less for your sake than for my own, that I become less likely to make a similar mistake in the future.)

2. Structure of 611.357(e)(2)(B):

The Board agrees that the structure of 611.357(e)(2)(B) is a bit awkward, but has been unable to devise a better option, given the USEPA rule to which it corresponds. The structure of subsection (e)(2)(B) is derived from a long, convoluted run-on sentence in the corresponding federal provision, 40 CFR 141.87(e)(2)(ii):

"A water system may reduce the frequency with which it collects tap samples for applicable water quality parameters specified in paragraph (e)(1) of this section to every three years if it demonstrates during two consecutive monitoring periods that its tap water lead level at the 90th percentile is less than or equal to the PQL for lead specified in § 141.89 (a)(1)(ii), that its tap water copper level at the 90th percentile is less than or equal to 0.65 mg/L for copper in § 141.80(c)(2), and that it also has maintained the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f)."

The Board previously subdivided USEPA's run-on sentence into subsections for enhanced clarity, based on the following logical breakdown of the federal provision:

"A water system may reduce the frequency with which it collects tap samples for applicable water quality parameters specified in paragraph (e)(1) of this section to every three years if it demonstrates during two consecutive monitoring periods

"that its tap water lead level at the 90th percentile is less than or equal to the PQL for lead specified in § 141.89 (a)(1)(ii),

"that its tap water copper level at the 90th percentile is less than or equal to 0.65 mg/L for copper in § 141.80(c)(2), and

"that it also has maintained the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f)."

This is a simple enunciation of a result together with the three preconditions to that result: "X if A, B, and C."

The October 10, 2007 USEPA amendments added a sentence to the end of the provision that imposes a limitation on the reduced sampling that would result from fulfillment of the preconditions:

"This sampling begins no later than the third calendar year following the end of the monitoring period in which the third consecutive year of monitoring occurs."

The new logical structure became as follows: "X if A, B, and C. D." This would be clearer logically structured as follows: "X, if A, B, and C, but subject to D."

The Board must use a structure for this provision that best accommodates the three preconditions to the reduced monitoring together with the limitation on the reduced sampling. The Board must do so, while maintaining a structure that parallels the corresponding federal provision at a level of indents that is permissible in Illinois regulations.

The Board chose the structure included in the proposal of August 7 adopted by the Board, but erred in the subsection references. The conditional language, now corrected, "that has fulfilled the conditions of subsections (e)(2)(B)(i) through (e)(2)(B)(iii) of this Section, subject to the limitation of subsection (e)(2)(B)(iv) of this Section," minimizes the potential for confusion that might arise. That is the essence of the structure that USEPA uses in 40 CFR 141.87(e)(2)(ii).

To further enhance the clarity of the provision as it appeared in the August 7 proposal for public comment, note that the Board has changed "subject to the conditions of subsection (e)(2)(B)(iv)" to "subject to the limitation of subsection

(e)(2)(B)(iv)."

There are two alternative structures. The first would either revert to the federal run-on sentence or combine the three conditional sentences into the body of one subsection. The second alternative would build on the broken structure of the current Illinois provision, and it would add a fourth subsection for the new limitation on the reduced monitoring. It would remove the semicolon and render each condition and the new limitation in coordinate subsections, to appear essentially as follows:

B) A water supplier may reduce the frequency ... if the following conditions are fulfilled:

i) The supplier must demonstrate that ... in Section 611.359(a)(1)(B).

ii) The supplier must demonstrate that ... in Section 611.350(c)(2).

iii) The supplier must demonstrate that ... under Section 611.352(f).

iv) Monitoring conducted every three years must ... third calendar year.

This still does not fit, and the greater departure from the federal structure could breed a greater potential for confusion.

The Board would prefer to retain the structure presented in the proposal on August 7, with the subsection references corrected, than to either use USEPA's run-on sentence or to depart further from the federal structure to the rules.

3. Errors in references to the October 10, 2007 federal amendments:

The federal amendments to the Lead and Copper Rule occurred on October 10, 2007. I have marked the necessary correction in the Board notes appended to Sections 611.350, 611.351, 611.353, 611.354, 611.355, 611.356, 611.357, 611.358, 611.259(a), and 611.360 in my working copy of the amendments.

Michael J. McCambridge
Attorney
Illinois Pollution Control Board
312-814-6924

>>> "Connelly, Deborah" <connelly@ilga.gov> 8/19/2008 12:22 PM >>>
Mike:

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