

ILLINOIS POLLUTION CONTROL BOARD

August 19, 2010

IN THE MATTER OF:)	
SDWA UPDATE, USEPA AMENDMENTS	)	R10-1
(January 1, 2009 through June 30, 2009)	)	(Identical-in-Substance
	)	Rulemaking - Public Water Supply)
)	
)	
SDWA UPDATE, USEPA AMENDMENTS	)	R10-17
(July 1, 2009 through December 31, 2009)	)	(Identical-in-Substance
	)	Rulemaking - Public Water Supply)
)	
)	
SDWA UPDATE, USEPA AMENDMENTS	)	R11-6
(January 1, 2010 through June 30, 2010)	)	(Identical-in-Substance
	)	Rulemaking - Public Water Supply)
	)	(Consolidated)

Proposed Rule. Proposal for Public Comment. Supplemental Request for Comments.

SUPPLEMENTAL OPINION OF THE BOARD (by T.E. Johnson):

SUMMARY OF THIS ACTION

The Board today requests public comments on specific issues relating to proposed amendments to the Illinois regulations that are “identical in substance” to drinking water regulations adopted by the United States Environmental Protection Agency (USEPA). The Board adopted a proposal for public comment in this consolidated docket on August 5, 2010 that would update the Illinois public water supply rules to include five USEPA actions. Those actions span the three identical-in-substance update periods of January 1, 2009 through June 30, 2009, July 1, 2009 through December 31, 2009, and January 1, 2010 through June 30, 2010.

This supplemental opinion and order pertains to only one set of federal amendments and only one aspect of those amendments. Issues relative to the reporting provision of the Aircraft Drinking Water Rule (ADWR) became apparent as Board staff prepared the proposed amendments for publication in the *Illinois Register*.

Sections 7.2 and 17.5 of the Environmental Protection Act (Act) (415 ILCS 5/7.2 and 17.5 (2008)) provide for quick adoption by the Board of regulations that are identical in substance to federal 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) (2006)). The USEPA National Primary Drinking Water Regulations (NPDWRs) implement Sections 1412(b), 1414(c), 1417(a), and 1445(a) of the federal SDWA (42 U.S.C. §§ 300g-1(a), 300g-3(c), 300g-6(a), and 300j-4(a) (2006)). The federal SDWA regulations are found at 40 C.F.R. 141 through 143. Section 17.5 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 (2006)) do not apply to the Board's adoption of identical-in-substance regulations.

**DISCUSSION OF THE AIRCRAFT DRINKING WATER RULE
IMPLEMENTATION ISSUE AND REQUEST FOR COMMENTS**

On October 19, 2009 (at 75 Fed. Reg. 53590), USEPA adopted the ADWR, which applies to aircraft potable water systems that are public water supplies. The ADWR establishes standards for water quality monitoring and management, water-handling equipment maintenance, public notice, and reporting and recordkeeping. The ADWR applies to aircraft that provide drinking water to 25 or more persons at least 60 days per year. These aircraft water systems (AWSs) fall within the definition of "public water supply" (PWS)¹, as contemplated by section 300f(4) of SDWA (42 U.S.C. 300f(4) (2006); *see* 415 ILCS 5/3.365 (2008)).

To fall within the definition of PWS, the supplier must provide water to 15 or more service connections or "regularly serve" water to 25 or more persons. *See* 42 U.S.C. 300f(4)(A) (2006). USEPA has interpreted "regularly serves" water to mean "daily" provide water "at least 60 days out of the year." 40 C.F.R. 141.2 (2009) (definition of PWS). The definition of PWS in the Act uses language derived from the USEPA definition. Under the Act, a PWS "serve[s] at least 15 service connections or . . . regularly serve[s] at least 25 persons at least 60 days per year." 415 ILCS 5/3.365 (2008).

Description of the Implementation Issues. Proposed Section 611.1106 (corresponding with 40 C.F.R. 141.806, as added at 74 Fed. Reg. at 53624) contains the reporting requirements for the ADWR. Section 611.1106 prescribes what an air carrier must report and when reporting must occur. Section 611.1106 further provides how the reporting must occur: electronically or by another approved method. The provision proposed by the Board reads as follows:

- d) All information required to be reported to the Agency under this Subpart AA must be in an electronic format established or approved by the Agency. If an air carrier is unable to report electronically, the air carrier may use an alternative approach that the Agency has approved. 35 Ill. Adm. Code 611.1106(d) (corresponding with 40 C.F.R. 141.806(d), as added at 74 Fed. Reg. at 53624).

¹ SDWA uses "public water system," "community water system," and "non-community system," but the Act uses "public water supply," "community water supply," and "non-community supply." The definitions of these terms are so similar that there is no difference between the use of "supply" by the State in place of the use of "system" by USEPA in these terms. *Compare* 415 ILCS 5/3.145 and 3.365 (2008) *with* 42 U.S.C. 300f(4)(A), (15), and (16) (2006) (definitions of these terms). The Board follows the language of the Act and uses "supply" throughout this discussion, including the definition of these terms under SDWA.

The corresponding federal text is nearly identical to the provision proposed by the Board, except that (1) the Board changed “Administrator” to “Agency” three times; (2) the Board changed “this subpart” to “this Subpart AA”; and (3) the Board changed “an alternative approach that the Administrator approves” to “an alternative approach that the Agency has approved.” *Compare* 35 Ill. Adm. Code 611.1106(d) *with* 40 C.F.R. 141.806(d), as added at 74 Fed. Reg. at 53624.

In the federal reporting provision (40 C.F.R. 806(d), as added at 74 Fed. Reg. at 53624), USEPA requires electronic reporting, although USEPA will allow use of an approved alternative. The Board is unaware what electronic reporting capabilities exist in the Agency and DPH. If neither entity has immediately available electronic reporting capabilities, a requirement for electronic reporting to either entity would be undesirable.

On the other hand, USEPA stated in the 2008 proposal of the ADWR that had a reporting system under development that would be similar to the Safe Drinking Water Information System/State version (SDWIS/STATE) for use by air carrier reporting under the ADWR. 73 Fed. Reg. 19320, 33 (Apr. 9, 2008). The Board has no knowledge of the status of the SDWIS/STATE system. It is possible that reporting to the SDWIS/STATE system should be specified in a note to Section 611.1106(d).

Thus, the Board must specifically determine from the Agency and/or DPH answers to several questions listed under the request for comments that follows.

Request for Comments. The Board requests answers to the following specific questions:

1. What electronic reporting capabilities do the Agency or DPH currently have that would allow acceptance of air carrier reports?
2. Considering the interstate nature of air carrier operations and the fact that only a small portion of air carriers are either based in Illinois or operate a hub point in Illinois, although many carriers operate in interstate commerce out of points in Illinois, which of the several air carriers should report to the State of Illinois?
3. Will the State of Illinois coordinate implementation and reporting with USEPA and/or sister states?
5. Should the Board more appropriately designate USEPA as the recipient of air carrier reports?
6. Assuming that the reporting should occur to the State, which of the Agency, DPH, or another State agency is the most appropriate entity to accept air carrier reports?

7. Assuming that the reporting should occur to USEPA, is SDWIS/STATE the appropriate mode for reporting? Will USEPA make the reported air carrier reports available to the implementing Illinois State agency?
8. Can either the Agency or DPH provide the Board with an Internet address that air carriers may use for submission of electronic reports?
9. Which entity, the Agency, DPH, or USEPA is the appropriate entity to approve alternative reporting methods?
10. If the appropriate entity for approving alternative reporting methods is the State (the Agency or DPH), is there any information that the Board can append in a Board note to Section 611.1106(d) that will direct the regulated community to the appropriate entity from which to gain approval of alternative reporting methods?
11. If the appropriate entity for approving alternative reporting methods is USEPA, is there any information that the Board can append in a Board note to Section 611.1106(d) that will direct the regulated community to the appropriate entity from which to gain approval of alternative reporting methods?

The Board has opted to slightly delay submission of the proposal for public comment to the Office of the Secretary of State for publication in the *Illinois Register*. The publication of the Notice of Proposed Amendments in the *Illinois Register* after the date of adoption of this Board order will eliminate any need to extend the comment period due to this supplemental request for comments on the ADWR.

IT IS SO ORDERED

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above supplemental opinion and order on August 19, 2010, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board