

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO)
PRIMARY DRINKING WATER)
STANDARDS: 35 ILL. ADM.)
CODE 611.490)

R14- 9
(Rulemaking- Water)

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SEP 20 2013

STATE OF ILLINOIS
Pollution Control Board



ORIGINAL

NOTICE OF FILING

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board Illinois EPA's APPEARANCE; STATEMENT OF REASONS; MOTION FOR ACCEPTANCE; CERTIFICATE OF ORIGINATION; and PROPOSED AMENDMENTS TO 35 ILL. ADM. CODE PARTS 611, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

Joanne M. Olson
Assistant Counsel
Division of Legal Counsel

DATED: September 18, 2013

1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
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STATEMENT OF REASONS

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”), by and through its counsel, and hereby submits this Statement of Reasons to the Illinois Pollution Control Board (“Board”) pursuant to Sections 17, 27, and 28 of the Environmental Protection Act (“Act”) (415 ILCS 5/17, 27, and 28) and 35 Ill. Adm. Code 102.202 in support of the attached proposed regulations.

I. INTRODUCTION

Under the Board’s regulations, Illinois EPA can accept samples analyzed by an Illinois certified laboratory or a United States Environmental Protection Agency (“USEPA”) certified laboratory to demonstrate compliance with the Safe Drinking Water Act (“SDWA”). 35 Ill. Adm. Code 611.490. The Illinois EPA proposes that the Board amend Section 611.490 to allow the Illinois EPA to accept samples analyzed by laboratories certified by another state or a federal agency when no laboratories have been certified by the State of Illinois for a particular parameter.

II. BACKGROUND

Under the authority granted by the SDWA, the USEPA has established national primary drinking water regulations (“NPDWR”), which include maximum contaminant levels, monitoring and reporting requirements, and public notification procedures. 42 U.S.C. §300f-

300k (2011); 40 C.F.R. Part 141 (2012). States may apply for and receive primary enforcement responsibility for public water systems if they, *inter alia*, have adopted drinking water regulations that are no less stringent than the NPDWR. 42 U.S.C. §300g-2(a)(1). In addition to adopting regulations no less stringent than the NPDWR, states must also adopt and implement adequate procedures for the enforcement of the NPDWR. 42 U.S.C. §300g-2(a)(2). These procedures include the “establishment and maintenance of a state program for the certification of laboratories conducting analytical measurements of drinking water contaminants.” 40 C.F.R. §142.10.

Shortly after the adoption of the SDWA in 1974, Illinois began taking steps toward receiving primary enforcement responsibility. In 1977, the Illinois General Assembly amended Section 4 of the Environmental Protection Act to give the Illinois EPA the authority “to establish and enforce minimum standards for the operation of laboratories relating to the analysis and laboratory tests for . . . the sanitary, chemical, and mineral quality of water distributed by a public water supply,” and to issue certificates of competency to persons and laboratories meeting the minimum standards. 415 ILCS 5/4(n)-(o) (2012); See also P.A. 80-523. In 1978, the Illinois Pollution Control Board adopted drinking water regulations no less stringent than NPDWR. See R77-13 (currently codified in 35 Ill. Adm. Code 611). USEPA granted Illinois EPA primary enforcement responsibility on August 29, 1979. 44 Fed. Reg. 50648.

Under the SDWA, the only way to demonstrate compliance with the NPDWR’s maximum contaminant levels is to have water samples analyzed by a certified laboratory: “Samples may be considered only if they have been analyzed by a laboratory certified by the State except that measurements for alkalinity, calcium, conductivity, disinfectant residual, orthophosphate, pH, silica temperature and turbidity may be performed by any person acceptable

to the State.” 40 C.F.R. §141.28. In the federal rules, “state” is defined to mean any agency of the state which has jurisdiction over public water systems, if that state has primary enforcement responsibility, and the regional administrator of USEPA if the state does not have primary enforcement responsibility. 40 C.F.R. §141.2. Because Illinois EPA has primary enforcement responsibility, Illinois certified laboratories may be used to demonstrate compliance.

The Illinois Pollution Control Board adopted the federal certified laboratory requirement, currently codified in Section 611.490. This Section provides:

Section 611.490 Certified Laboratories

- a) For the purpose of determining compliance with Subparts G, K through O, Q and S of this Part, samples will be considered only if they have been analyzed as follows:
 - 1) By a laboratory certified pursuant to Section 4(o) of the Act [415 ILCS 5/4(o)];
 - 2) By a laboratory certified by USEPA; or
 - 3) For measurements of alkalinity, calcium, conductivity, disinfectant residual, orthophosphate, silica, turbidity, free chlorine residual, temperature, and pH, by a person under the supervision of a certified operator (35 Ill. Adm. Code 603.103).
- b) Nothing in this Part must be construed to preclude the Agency or any duly designated representative of the Agency from taking samples or from using the results from such samples to determine compliance by a supplier of water with the applicable requirements of this Part.
- c) The CWS supplier must have required analyses performed either at an Agency laboratory or a certified laboratory. The Agency may require that some or all of the required samples be submitted to its laboratories.

35 Ill. Adm. Code 611.490. Under Section 4 of the Act, the Illinois EPA may delegate its authority to certify laboratories to another state agency. 415 ILCS 5/4(o). Illinois EPA has delegated a portion of the laboratory certification program to the Illinois Department of Public Health. *See* 35 Ill. Adm. Code 186; 35 Ill. Adm. Code 465. Therefore, under the Board’s

current rule, compliance with the SDWA can be demonstrated when water samples are analyzed by a laboratory certified by Illinois EPA, Illinois Department of Public Health or the United States Environmental Protection Agency.

Illinois EPA has been certifying laboratories since Section 4 was added to the Act in the late 1970's. In 2000, Illinois EPA began offering National Environmental Laboratory Accreditation Program (NELAP) certifications. A laboratory is certified by field, such as for the SDWA, and then by method and analyte. Prior to an onsite visit, a laboratory seeking certification must pass performance testing samples, determine detection/reporting limits, and have standard operating procedures. At the on-site visit, the Illinois EPA will check a laboratory's quality system including the facility, the equipment, records, and data package. Currently, Illinois EPA certifies 31 in-state laboratories and 50 out-of-state laboratories. Certifications must be renewed annually.

III. PURPOSE AND EFFECT

A shortage of certified radiochemistry laboratories has prompted Illinois EPA to submit this proposed change. With fewer radiological laboratories seeking certification across the country, and fewer governmental entities issuing these certifications, Illinois EPA believes Section 611.490 needs to be amended to increase the number of certified laboratories that public water supplies can send their samples to for analysis. Under Section 611.490, if no laboratory holds an Illinois certification to analyze radiological samples, only a laboratory certified by USEPA can analyze the samples to demonstrate compliance with the SDWA. Illinois EPA proposes increasing the types of certified laboratories that can be used to demonstrate compliance with the SDWA. Section 611.490 should be amended to allow the Illinois EPA to accept samples analyzed by laboratories certified by other States that have been granted primary

enforcement responsibility from USEPA or samples analyzed by a laboratory certified by a federal agency. Before Illinois EPA would accept these samples, the Illinois EPA must determine that the standards used for the certification are substantially equivalent to the certification standards under the Section 4 of the Act.

Currently, two other states in USEPA Region 5 accept samples analyzed by the other states or USEPA. In Ohio, Section 3745-89-02 of Ohio Administrative Code allows the Ohio EPA to accept sample data analyzed by laboratories approved by USEPA or another state, when there are no Ohio certified laboratories for a particular contaminant. Wisconsin's Department of Natural Resources regulations only require laboratories submitting data be "certified," and state that WDNR can recognize a certification issued by another state if the standards used to evaluate laboratories are substantially the same. Illinois EPA's proposal combines Ohio and Wisconsin's approach by requiring both the lack of Illinois certified laboratories and substantially similar laboratory certification standards.

IV. THE ILLINOIS EPA'S PROPOSAL

The following is a section-by-section summary of the Illinois EPA's proposal.

Section 611.490

The Illinois EPA proposes adding a new subsection (a)(3), which reads as follows:

When no laboratory has been certified pursuant to subsection (a)(1) of this Section to analyze a particular contaminant, by a laboratory certified, registered, accredited, licensed or otherwise approved by another state with primary enforcement responsibility, or an agency of the federal government, if the standards used for the certification, registration, accreditation, licensure or other approval of that laboratory are substantially equivalent to the certification standards under Section 4(o) of the Act;

V. TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

Section 27 of the Act requires the Board to consider the technical feasibility and economic reasonableness of all rulemaking proposals. Illinois EPA's proposed amendment

would not require facilities to implement additional treatment technologies. Likewise, facilities will not have spend additional money to comply with this proposed change. Instead, the proposed change will give public water supplies greater flexibility. When Illinois has not certified any laboratories for a particular contaminant, public water supplies will still be able to demonstrate compliance with the NPDWR by using a laboratory certified by another state with primary enforcement responsibility. For these reasons, the Agency's proposed changes are technically feasible and economically reasonable.

VI. AFFECTED FACILITIES AND ECONOMIC IMPACT

This proposal could impact any public water supply within the Illinois, and any laboratory certified by any state with primary enforcement responsibility. Illinois EPA does not anticipate an economic impact because public water supplies and laboratories will not be subject to additional environmental standards or controls.

VII. SYNOPSIS OF TESTIMONY

The Illinois EPA will present two witnesses. The first witness will summarize the laboratory certification program, and the second witness will discuss the necessity, purpose and effect of this regulatory proposal.

VIII. PUBLISHED STUDY OR RESEARCH REPORT

Section 102.202(e) of Title 35 of the Illinois Administrative Code requires the regulatory proposal to include “[a] descriptive title or other description of any published study or research report used in developing the rule.” Neither a research report nor a published study was used in developing this rule. Therefore, the requirement of Section 102.202(e) is inapplicable.

X. CONCLUSION

WHEREFORE, the Illinois EPA respectfully requests the Board to adopt the Illinois EPA's proposed regulation in its entirety as submitted.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

Joanne M. Olson
Assistant Counsel
Division of Legal Counsel

DATED: September 18, 2013
1021 N. Grand Ave. East
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MOTION FOR ACCEPTANCE

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its attorneys, and pursuant to 35 Ill. Adm. Code 102.106, 102.200, and 102.202, moves that the Illinois Pollution Control Board accept for hearing the Illinois EPA's proposal for the adoption of amendments to 35 Ill. Adm. Code 611.490. This regulatory proposal includes (1) Notice of Filing; (2) Appearance; (3) Statement of Reasons; (4) Certification of Origination; (5) Proposed Amendments; (6) Certificate of Service; and (7) a computer disc containing the Proposed Amendments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

Joanne M. Olson
Assistant Counsel
Division of Legal Counsel

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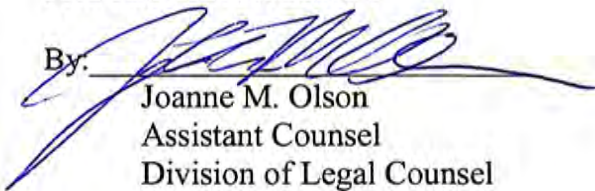
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CERTIFICATION OF ORIGINATION

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by one of its attorneys, and pursuant to 35 Ill. Adm. Code 102.202(i), the Illinois EPA certifies that the regulatory proposal in the above captioned matter amends the most recent version of Part 611 of the Illinois Pollution Control Board's regulations, as published on the Board's website.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

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THIS FILING IS SUBMITTED ON RECYCLED PAPER

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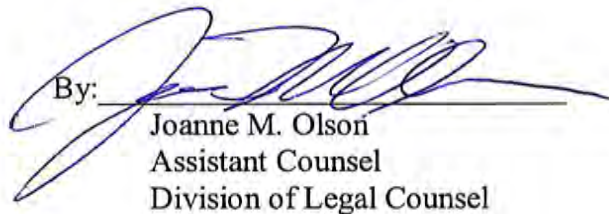
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STATE OF ILLINOIS
Pollution Control Board

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 MOTION FOR ACCEPTANCE; APPEARANCE; CERTIFICATE OF ORIGINATION; STATEMENT OF REASONS; and PROPOSED AMENDMENTS TO 35 ILL. ADM. CODE PARTS 611 upon persons listed on the Service List by mailing, unless otherwise noted on the Service List, a true copy thereof in an envelope duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois on September 18, 2013.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

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