

**John Therriault - RE: R01-1/R10-17/R11-6 SDWA Update Proposal for Public Comment**

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STATE OF ILLINOIS  
Pollution Control Board

PC#4

**From:** Mike McCambridge  
**To:** Poy.Thomas@epamail.epa.gov  
**Date:** 9/23/2010 1:14 PM  
**Subject:** RE: R01-1/R10-17/R11-6 SDWA Update Proposal for Public Comment  
**CC:** Crowley, Kathleen; Diers, Stefanie; Girard, Tanner; Glowacki.Joanna@epamail.epa.gov; Johnson, Tom; ken.runkle@illinois.gov; Kuefler.Janet@epamail.epa.gov; McGill, Richard; rick.cobb@illinois.gov; Shoven.Heather@epamail.epa.gov; Therriault, John

Thank you for your response. I will have this correspondence introduced the record for Board consideration. The Board will determine whether the ADWR is a set of rules that are "appropriate only in a USEPA-administered program." This would be a determination that the identical-in-substance mandate does not apply to the ADWR even though USEPA adopted the ADWR as NPDWRs.

**John Therriault: Please add this e-mail to the R10-1/R10-17/R11-6 SDWA update docket.**

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



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Government

>>> <Poy.Thomas@epamail.epa.gov> 9/23/2010 12:43 PM >>>

Dear Mr. McCambridge:

Thank you for your recent message to Heather Shoven of my staff regarding IL's drinking water rules.

While the Aircraft Drinking Water Rule (ADWR) was developed under the authority of the Safe Drinking Water Act, including Section 1412, it is a regulation that is appropriate only in a USEPA-administered program. Region 5 has been directly involved with the development of the ADWR since the very beginning and I can assure you that the provisions/requirements were developed with the intent that they would be implemented by USEPA and not by the States. In reviewing the ADWR published in the Federal Register, I realize that it was not clearly stated up-front that the ADWR will be implemented by USEPA and understand how this intent might have been misunderstood.

Please feel free to contact me if any additional information is needed.

Tom Poy  
Chief, Ground Water and Drinking Water Branch  
USEPA - Region 5  
(312) 886-5991

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----- Forwarded by Heather Shoven/R5/USEPA/US on 09/22/2010 04:23 PM

STATE OF ILLINOIS  
Pollution Control Board

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From: "Mike McCambridge" <MCCAMBM@ipcb.state.il.us>  
To: Heather Shoven/R5/USEPA/US@EPA  
Cc: "Crowley, Kathleen" <CROWLEK@ipcb.state.il.us>, "Diers, Stefanie" <stefanie.diers@illinois.gov>, "Girard, Tanner" <GIRARDT@ipcb.state.il.us>, "Johnson, Tom" <johnsont@ipcb.state.il.us>, ken.runkle@illinois.gov, "McGill, Richard" <MCGILLR@ipcb.state.il.us>  
Date: 09/22/2010 04:19 PM  
Subject: RE: R01-1/R10-17/R11-6 SDWA Update Proposal for Public Comment

State statutory constraints would require me to document any contacts relative to any proceeding pending before the Board (ex parte contacts). That is why I forwarded a copy of my original e-mail to become part of the record in the R10-1/R10-17/R11-6 (consolidated) SDWA update docket. Further, under the Illinois regulatory scheme, the Illinois EPA is the lead agency with regard to contacts with USEPA relative to the State program. That is why I copied Stefanie Diers (the IEPA attorney assigned this proceeding) on my e-mail.

I am very interested in what USEPA has to add to the record in this proceeding, but within the constraints inherent to the fact that we are discussing a matter pending before the Board. This would require that our discourse becomes a part of the record, and I will ensure that Stefanie Diers (IEPA), Ken Runkle (DPH) and any other persons who request such will receive a copy of the dialog.

I think the easiest way to accomplish this is by an exchange of e-mails. This will allow us to ensure that the record of the exchange is complete and accurate. An e-mail exchange would also allow a back-and-forth exchange that would be too cumbersome for correspondence. Is e-mail workable and acceptable to you?

Assuming that an e-mail exchange is acceptable, I will begin with a few observations and questions that arose since my conversation with Ms. Kuefler.

I was surprised by Ms. Kuefler's observation that USEPA anticipated federal implementation of the ADWR, without state involvement. As a

result, I re-examined the Federal Register notices of October 19, 2009 (adopting the ADWR) and April 9, 2008 (proposing the ADWR).

In the Federal Register notice adopting the ADWR, I found a few references to USEPA implementation of the ADWR without involvement of the States. In the discussion of the effective dates, there is mention that there would be no delay to allow states to acquire enforcement authority for the rule, since USEPA would implement the rule. See 74 Fed. Reg. 53590, 609 (Oct. 19, 2009). Similarly, the discussion of the cost analysis states that state implementation costs were not a factor, since USEPA would bear the costs of implementation. See 74 Fed. Reg. at 53610. Such observations also appeared in the unfunded mandates and federalism segments of the discussion. See 74 Fed. Reg. at 53616. The re-examination disclosed also the absence of a segment of discussion ordinarily entitled "State Implementation," which is an ordinary part of USEPA's Federal Register notices adopting new NPDWRs. See, e.g., 71 Fed. Reg. 388, 440 (Jan. 4, 2006) (Stage 2 DDBPR); 71 Fed. Reg. 654, 729 (Jan. 5, 2006) (LT2ESWTR).

The Federal Register notice proposing the ADWR included a segment that was a bit more pointed. The proposal observed that "EPA regulations provide that State/Tribal primacy programs do not include public water systems on ICCs, such as aircraft." 73 Fed. Reg. 19320, 34 (Apr. 9, 2008) (citing 40 C.F.R. 142.3(b) & (b)(1)).

Thus, re-examination of the Federal Register notices and the Code of Federal Regulations, the Board could conclude that USEPA does not require the states to incorporate the ADWR into their SDWA-based drinking water programs. The inference is further possible that USEPA wishes the states to not do so, even though the ADWR is an NPDWR.

The Board's identical-in-substance mandate in section 17.5 of the Environmental Protection Act (415 ILCS 5/17.5) requires the Board to adopt regulations that are identical-in-substance to rules adopted by USEPA under sections 1412(b), 1414(c), 1417(a), and 1445(a) of SDWA (42 U.S.C. 300g-1(b), 300g-3(c), 300g-6(a), and 300j-4(a)). The ADWR is an NPDWR adopted by USEPA pursuant to section 1412(b), 1414(c), 1417(a), or 1445(a) of SDWA (42 U.S.C. 300g-1(b), 300g-3(c), 300g-6(a), or 300j-4(a)), correct?

Under section 7.2(a)(1) of the Environmental Protection Act (415 ILCS 5/7.2(a)(1)), however, the Board is not required to adopt under the identical-in-substance mandate regulations "that are appropriate only in USEPA-administered programs." Is the ADWR a rule that is "appropriate only in a USEPA-administered program," as such is intended by section 7.2(a)(1)?

Do you perceive any added reasons that the Board should not adopt the ADWR requirements, such as that state implementation of ADWR requirements would either be futile or interfere with USEPA's implementation of the ADWR requirements?

The Board will make a determination on the ADWR based on what is in the record. Whether the ADWR falls within the scope of the Board's identical-in-substance mandate will be critical to this determination.

Michael J. McCambridge  
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Illinois Pollution Control Board  
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>>> <Shoven.Heather@epamail.epa.gov> 9/22/2010 12:58 PM >>>

Dear Mr. McCambridge:

My colleague, Janet Kuefler, forwarded me the attached e-mail summary regarding the Board Proposal of Illinois ADWR-based rules. I would like to touch base with you either tomorrow morning or anytime on Friday to discuss your efforts related to the Aircraft Drinking Water Rule. When would be a convenient time for me to call you?

I look forward to the opportunity to discuss the ADWR with you.

Best wishes,  
Heather

Heather A. Shoven, Team Leader  
Aircraft Drinking Water Rule Implementation  
Ground Water and Drinking Water Branch  
U.S. EPA Region 5 (WG-15J)  
77 W. Jackson Blvd, Chicago, IL 60604  
Phone: (312) 886-0153 / Fax: (312) 582-5828

-----Forwarded by Janet Kuefler/R5/USEPA/US on 09/22/2010 07:26AM -----

To: ken.runkle@illinois.gov, kuefler.janet@epa.gov,  
stefanie.diers@illinois.gov  
From: "Mike McCambridge" <MCCAMBM@ipcb.state.il.us>  
Date: 09/21/2010 07:26PM  
cc: "Crowley, Kathleen" <CROWLEK@ipcb.state.il.us>, "Girard, Tanner"  
<GIRARDT@ipcb.state.il.us>, "Johnson, Tom" <johnsont@ipcb.state.il.us>,  
"McGill, Richard" <MCGILLR@ipcb.state.il.us>, "Therriault, John"  
<TERRIAJ@ipcb.state.il.us>  
Subject: R01-1/R10-17/R11-6 SDWA Update Proposal for Public Comment

John Therriault: Please enter a copy of this e-mail into the referenced docket as a public comment.

Earlier today I tried to contact the Agency, USEPA, and the Illinois Department of Public Health to update the mailing list for the R10-1/R10-17/R11-6 SDWA (consolidated) drinking water update. In addition to obtaining names, I learned that issues may exist relating to USEPA's October 19, 2009 Aircraft Drinking Water Rule (ADWR). Some may require resolution in the near-future. I memorialize my conversations for the record, briefly describe the ADWR requirements for the benefit of DPH, outline potential issues relative to the ADWR, and forward pertinent key documents relating to the ADWR to DPH, the Agency, and USEPA.

## The Aircraft Drinking Water Rule

SDWA authorizes USEPA to regulate the water systems on public conveyances. The ADWR is USEPA's first foray into regulating water systems on public conveyances. Since aircraft water systems are all non-community water systems, any implementation of State ADWR-based rules in Illinois would involve the Department of Public Health.

Under the ADWR, air carriers are required to assemble written procedures for boarding water, for sanitizing and monitoring the cleanliness of its aircraft water systems, for conducting further testing when sampling indicates potential problems, and notifying passengers and crew when specified events occur that indicate that contamination of the water system has occurred. A different notification is required when the air carrier has not followed the written procedures, so that the air carrier cannot affirmatively show that an aircraft water system has not been contaminated. The ADWR requires that an air carrier assemble a Coliform Monitoring Plan and an Aircraft Water System Operations and Maintenance Plan for all of its aircraft water systems and notify USEPA of its fleet composition and completion of these plans by April 19, 2011. Full compliance with all operational, monitoring, record keeping, and reporting requirements is required by October 19, 2011.

## Board Proposal of Illinois ADWR-Based Rules

On August 5, 2010, the Board proposed amendments to the Illinois SDWA-based drinking water rules. Involved are numerous amendments to the analytical methods provisions, but more a more significant segment relates to USEPA's October 19, 2009 adoption of the ADWR. On August 19, 2010, the Board adopted a supplemental opinion and order highlighting an additional issue relating to the ADWR upon which the Board requested comments. Attached are electronic copies of the Board's August 5, 2010 opinion and order and August 19, 2010 supplemental opinion and order. Also attached is a copy of the October 19, 2009 Federal Register notice in which USEPA adopted the ADWR.

The Notice of Proposed Amendments for this consolidated docket should appear in the October 8, 2010 issue of the Illinois Register. If this occurs, it would mean that the public comment period would end on November 23, 2010. (Difficulty upon discovery of minor errors in the text, the extreme time needed to document the revisions in the text that were not directly based on the literal text of the underlying federal amendments, and other factors resulted in the delay in publication.)

## State Implementation of ADWR Requirements

Although the October 19, 2009 Federal Register notice clearly contemplates state implementation of the ADWR, USEPA may not expect the states to adopt their own versions of the ADWR, even though the ADWR is a national primary drinking water regulation. Contact with USEPA Region 5 to obtain a mailing address resulted in the observations by Janet Kuefler that USEPA may not view the ADWR as an essential element of a state SDWA program. Ms. Kuefler indicated that USEPA contemplated

implementing the regulation.

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Shoven/R5/USEPA/US] [attachment "R1001-1or.pdf" deleted by Heather

Shoven/R5/USEPA/US]