

John Therriault - Re: FW: SDWA Identical in substance: IPCB R10-01, R10-17, R11-6

From: Mike McCambridge
To: Noureldin.Mostafa@epamail.epa.gov; Olson, Joanne
Date: 6/27/2011 1:49 PM
Subject: Re: FW: SDWA Identical in substance: IPCB R10-01, R10-17, R11-6
CC: Cobb, Rick; Crowley, Kathleen; Girard, Tanner; Johnson, Tom; McGill, Richard; McMillan, Dave; Rominger, Kyle; Therriault, John

USEPA published the list of newly approved alternative equivalent methods on June 24, 2011. That means that the statutory deadline for Board adoption of amendments to the drinking water methods is June 24, 2012. It will proceed as docket R12-4. I will add the two corrections that I found from the last update to the R12-4 amendments. Please give me any additional suggestions for corrections. Sooner is better than later.

Based on the June 24, 2012 due date, I presently anticipate that the Board will consider a proposal for public comment in docket R12-4 no later than March 15, 2012. I do not anticipate Board consideration of a proposal for public comment sooner than the Government Printing Office publishes the June 2011 List of Sections Affected. That publication is likely no sooner than the beginning of August. Let me know if Board consideration of a proposal that includes the two corrections is better sooner than later.

John Therriault: Please add this e-mail as a public comment in docket **R12-4**.

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



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PC 12-4

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>>> "Olson, Joanne" <Joanne.Olson@Illinois.gov> 6/24/2011 10:16 AM >>>
 Mostafa,

Below you will find an explanation from the IPCB regarding the requested corrections to 611.102. The IPCB believes that it has made two small errors, and has agreed to mark them for correction in the next identical in substance rule making. Mike McCambridge has given an excellent explanation of why the other references to 6610 and 6251 are not errors. Please see below. Let me know if this resolves USEPA's concerns regarding section 611.102. You can reach me via email @ joanne.olson@illinois.gov or telephone @ 217-782-5544.

Thanks.

Joanne

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From: Mike McCambridge [mailto:MCCAMBM@ipcb.state.il.us]
Sent: Tuesday, June 21, 2011 6:52 PM
To: Olson, Joanne
Subject: Re: SDWA Identical in substance: IPCB R10-01, R10-17, R11-6

I preface my analysis of the USEPA-cited exceptions to the SDWA rules with the observation that the Board works diligently to ensure that the Illinois drinking water rules fulfill the federal requirements for State primacy authorization. The Board never intends a substantive difference between the substance of the Illinois drinking water regulations and their federal counterparts, except under very limited circumstances.

There are two noteworthy exceptions where the Board intends that substantive differences exist. The first is where the Illinois rules include a more stringent requirement that was adopted under the general rulemaking authority, and that more stringent rule is not inconsistent with the corresponding USEPA requirements. The second is where the Board finds a patent error in a federal rule that is both obvious on its face and remediable by clear indications as to what USEPA intended. Neither circumstance exists here. The Board intends that all analytical methods conform only with the methods that USEPA has approved for use relative to each drinking water parameter.

As reflected by your e-mail, USEPA has found a small number of errors relative to two analytical methods in several segments of the rules. I think that USEPA is partially in error, as I have found only two errors relative to one method in two segments of the rules. These both arose in the course of the R10-1/R10-17/R11-6 amendments: (1) The Board inadvertently omitted a reference to "Method 6610 B" from the 21st edition of "Standard Methods for the Examination of Water and Waste Water" (Standard Methods); and (2) the Board listed Method 6610 in the incorporations of methods from the 21st edition of Standard Methods by reference, which should have appeared as Method 6610 B. I have marked these errors for correction in the next identical-in-substance update.

Content of the Federal Regulations. The referenced methods in 40 C.F.R. 141.24(e) are Methods 6610 and 6651 from the 18th edition supplement and the 19th and 20th editions of Standard Methods. Method 6610 is approved for carbofuran and oxamyl, and Method 6651 is approved for glyphosate. There is no reference limiting to Method 6610 B or Method 6651 B. See 40 C.F.R. 141.24(e)(1) (2010) (text and table). These are the methods approved by USEPA by rule.

Federally Approved Alternative Equivalent Methods. Section 1401(1) of the Safe Drinking Water Act authorizes USEPA to "add equally effective quality control and testing procedures by guidance published in the Federal Register," but these equivalent approvals relate back to whatever analytical methods that USEPA has established as part of the primary drinking water regulation (NPDWR) for a contaminant. See 42 U.S.C. 300f(1) (2001). USEPA cannot amend the NPDWR by the equivalent approval procedure; USEPA must use the formal rulemaking procedure to withdraw existing methods that are part of the NPDWR. See 72 Fed. Reg. 17902, 05 (Apr. 10, 2007).

USEPA used its expedited approval process to approve Method 6610 B for carbofuran and oxamyl in Standard Methods, 21st edition and Method 6610 B-04 from Standard Methods Online for the purposes of the 40 C.F.R. 141.24(e)(1) analytical requirements. There was no similar added approval for Method 6651. See Appendix A to Subpart C of 40 C.F.R. 141 (2010).

The Structural Differences Between USEPA and Illinois Requirements. The Board incorporated the federal analytical requirements into the Illinois regulations using a different structure than that of the corresponding federal rules. Principally, for current purposes, the first difference is that the Board referenced the methods to be used in a substantive analytical requirements provision, then incorporated the particular analytical methods for use in a centralized provision at 35 Ill. Adm. Code 611.102. The second difference is that the Board included the methods approved by USEPA using the equivalent alternative procedure together with the methods approved by USEPA by rulemaking, marking the approved alternative methods with an explanatory Board note.

1: Examination of The Substantive Listing of Analytical Methods. The Illinois equivalent to 40 C.F.R.

141.24(e)(1) is 35 Ill. Adm. Code 611.645. The Board amended each of the entries for carbofuran, glyphosate, and oxamyl in R10-1/R10-17/R11-6. The amendments to the entries for carbofuran and oxamyl were based on USEPA approvals of alternative equivalent analytical procedures using the summary procedure. The single amendment to the glyphosate entry was a mere change in punctuation, and it was not related to a federal revision.

Oxamyl Is Correct. The entry for oxamyl in the table included in the Illinois provision refers to "Standard Methods, 18th ed. Supplement, 19th or 20th ed., Method 6610; Standard Methods 21st ed., Method 6610 B; or Standard Methods Online, Method 6610 B-04" as a result of the R10-1/R10-17/R11-6 amendments. This accurately reflects the USEPA approval of Method 6610 from the 18th edition supplement; the 19th, 20th, and 21st editions of Standard Methods; and Standard Methods Online.

Carbofuran Includes an Error. The entry for carbofuran in the table should have duplicated this text, but it does not. Instead, the carbofuran entry includes the following incomplete reference: "Standard Methods, 18th ed. Supplement, 19th ed. or 20th ed., Method 6610 or Standard Methods 21st ed. or Standard Methods Online, Method 6610 B-04." This entry is defective in that it does not include "Method 6610 B" offset by a comma after "Standard Methods 21st ed." The rest of this entry accurately reflects the USEPA approvals from Standard Methods, 18th edition supplement and the 19th and 20th editions and from Standard Methods Online.

Glyphosate Is Correct. The entry for glyphosate in the table provides for use of "Standard Methods, 18th ed., 19th ed., or 20th ed., Method 6651." This accurately reflects the USEPA approval in corresponding 40 C.F.R. 141.24(e)(1).

2: Examination of the Incorporations by Reference. The second segment of this analysis is examination of their incorporations by reference in 35 Ill. Adm. Code 102. The Board organized the materials relative to the Standard Methods by edition, listing each approved method under the particular edition from which use of the method is approved. Each listing cites to the provision for which that Method is incorporated by reference.

Standard Methods, 18th Edition Is Correct. Under the listings for Standard Methods, 18th edition, the Board included Method 6651 for 35 Ill. Adm. Code 611.645. This accurately reflects the approval by rule in 40 C.F.R. 141.24(e)(1).

Standard Methods, 18th Edition Supplement Is Correct. The sole listing for Standard Methods, 18th edition supplement is for Method 6610 for 35 Ill. Adm. Code 611.645. This accurately reflects the approval by rule in 40 C.F.R. 141.24(e)(1).

Standard Methods, 19th and 20th Editions Are Correct. Both of the listings for Standard Methods, 19th edition and Standard Methods, 20th edition include Methods 6610 and 6651 for 35 Ill. Adm. Code 611.645. This accurately reflects the approval by rule in 40 C.F.R. 141.24(e)(1).

Standard Methods, 21st Edition Includes an Error. The listings for Standard Methods, 21st edition include Method 6610 for 35 Ill. Adm. Code 611.645. This is an inadvertent error. This should have appeared as Method 6610 B to accurately reflect the equivalent approval in Appendix A to Subpart C of 40 C.F.R. 141. I have marked this error for future revision.

Standard Methods Online Is Correct. The listings for Standard Methods Online includes Method 6610 B-04 for 35 Ill. Adm. Code 611.645. This accurately reflects the equivalent approval in Appendix A to Subpart C of 40 C.F.R. 141.

Errors Marked for Future Correction. I have marked the corrections relative to use of Method 6610 B from the 21st edition of Standard Methods for carbofuran in 35 Ill. Adm. Code 611.102 and 611.645 for future correction. I cannot now tell when that will occur. I will, nevertheless, offer the following:

Timing of Corrections. If USEPA follows its pattern of the last couple of years, another set of equivalent methods approvals should arise soon. I do not have any sense of how urgently USEPA needs to see these corrections.

If the new approvals occur before July 1, 2011, the corrections discussed above will be added for completion before July 1, 2012. I could fairly promptly undertake preparing a proposal that includes the corrections. The June 2011 federal List of Sections Affected should be available by August, and that will allow me to gauge all federal actions during the current update period of January 1, 2011 through June 30, 2011. In this case, I believe it possible that the corrections would occur much sooner than July 1, 2012 if there is not a large volume of complex federal in the equivalent methods approvals.

If the new equivalent approvals occur after July 1, 2011, completion one year after the date of their publication would be required by statute. The problem is that I could not begin to assemble a proposal before February 2012. That is when the federal List of Sections Affected for December 2011 is available. I cannot safely undertake preparing a proposal for the period July 1, 2011 through December 31, 2011 for Board consideration until I can assess all federal actions during the period.

Anything Further. I have found no further corrections by cursory examination. I will place a copy of this e-mail into the docket for an appropriate SDWA update. If other questions arise, please notify me.

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>>> "Olson, Joanne" <Joanne.Olson@Illinois.gov> 6/21/2011 3:07 PM >>>

Mike,

I'm an attorney at the IEPA, working with public water supply on its primary enforcement responsibility program revisions under the SDWA. The board adopted the federal regulations in a consolidated docket IPCB R10-01, R10-17, R11-6, issuing a final opinion and order on December 2, 2010. IEPA submitted a preliminary request for program revision approval to the USEPA on April 22, 2011. The USEPA has indicated that the Board's rule is inconsistent with the USEPA's regulations for the analytical methods. Here is what the USEPA sent us:

"There are several instances where the analytical methods identified in section 611.102, Incorporations by Reference do not exactly match the EPA approved methods. These are as follows:

On pages 44, 47, 53 and 59, the reference to method 6610 should be to method 6610B. On pages 53 and 59, the reference to method 6251 should be to method 6251B.

These methods are correctly referenced in other parts of the application."

I looked at the board's final order dated December 2, 2010, and it appears the "B" is missing off of method 6610 (pgs 44, 47, 53, 59, 184 and 186) and method 6251 (53 and 59). I have asked our staff whether there is a method 6610 and a method 6251 (without the B). Do you know whether the board intended to use method 6610 and method 6251 in the places mentioned above by USEPA?

Thanks,

Joanne M. Olson

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