ORIGINAL

ILLINOIS POLLUTION CONTROL BOARD

James R. Thompson Center

100 West Randolph Street

Suite 11-500

Chicago, Illinois

November 5, 2013

1:00 o'clock p.m.

IN THE MATTER OF:	)	
	)	
AMENDMENTS TO PRIMARY	)	R14-9
DRINKING WATER STANDARDS:	)	(Rulemaking - Public
35 Ill. Adm. Code 611.490	)	Water Supply)

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MR. MCCAMBRIDGE: Let's go on the record.

This is the merit and economic hearing in the rulemaking captioned Amendments to Primary Drinking Water Standards, 35 Ill. Adm. Code 611.490, docketed as R14-9 by the Board, accepted for hearing by the Board by an Order of October 5th, 2013. This is based on a September 19, 2013 proposal submitted by the Illinois Environmental Protection Agency and supplemented on September 24, 2013.

My name is Mike McCambridge. I am the hearing officer. To my right is Jennifer Burke, the attending Board member. To my left are Anand Rao and Alisa Liu of the Board's technical scientific section.

Could you introduce yourself from the agency.

MS. OLSON: Good afternoon. My name is Joanne Olson. I'm assistant counsel at Illinois EPA and today I brought two witnesses with me who I will have introduce themselves.

MR. CRUMLY: I'm Michael Crumly, manager of the Drinking Water Compliance Assurance Section.

MR. SIDERS: My name is Scott Siders, I'm a lab accreditation officer, Lab Accreditation Unit, Division of Labs, Illinois EPA.

MR. MCCAMBRIDGE: Let the record show that there are no other persons present in the room.

Before I turn it over to the Agency, I will observe that on October 7, 2013 I hand delivered a letter to the Department of Commerce and Economic Opportunity, request for economic impact study. We have not yet received a response to that letter. Also I addressed a Hearing Officer Order to the Agency with a series of questions dated October 24, 2013. A review of the proposal and the existing regulations gave rise to a number of questions.

With that, I will turn it over to you, Ms. Olson.

MS. OLSON: Thank you.

It seems that we have two things on the agenda for today at least. The first is the pre-filed testimony and the second is your Hearing Officer Order from October 24th. We would like to have the testimony entered into the record as if read, if there is no objection from the Hearing Officer or any members or staff from the Board.

MR. MCCAMBRIDGE: Does anyone present object? Seeing no objection, leave is granted. These will be entered into the record as if read.

Can I print out -- since I was doing some highlighting, can I print these out and make sure you do not leave without them? Very good.

MS. OLSON: Thank you. Our witnesses will be happy to answer any questions the Board or anyone present would have on the pre-filed testimony, if you have any at this time.

MR. MCCAMBRIDGE: I don't think there are any other questions beyond what's in the Hearing Officer Order. The picture doesn't look real rosy for at least radionuclides.

If I can direct an additional question. I don't remember specifically that this was in the questions that went out by Hearing Officer Order. Is it the Agency's intent to tailor this to radionuclides or to have this broad enough that it would embrace all of the drinking water contaminates?

MR. CRUMBLY: Well, currently just for radionuclides, but down the road there might be new things that come along that we'd also need this capability, you know, to take other lab's work. So right now just radionuclides, but we're hoping, if need be, down the road we can use it also for other contaminates.

MR. MCCAMBRIDGE: I will note that in the questions there were a number of parallel positions that I asked about. You have the central provision at Section 611.490. Then for microbiologics, for cryptosporidium, for the inorganics, you'll have echos of this certified laboratory language. You know, so --

MR. CRUMBLY: Sure.

MR. MCCAMBRIDGE: That is not included in the radiologics. So whatever would come of the Agency's proposal, there would be no conflict with regard to radiologics, but there would be other potential conflicts which is the focal point of the questions.

Have you had an opportunity to address the questions?

MS. OLSON: Yes, we have. Thank you for those questions. You've picked up and pointed out some very good possible inconsistencies with the language as you just stated and we have looked at all those sections and we have proposed amendments to each of those sections.

If everyone's okay to move on, I can go to our responses to the questions that you propose.

MR. MCCAMBRIDGE: Would you, please.

MS. OLSON: Sure. We wrote up written

responses and I'd like to move it into the record as Exhibit 1, if there are no objections.

MR. MCCAMBRIDGE: Seeing no objections, admitted as Exhibit 1.

MS. OLSON: I brought copies. I didn't know how many people would be here. We went through and this document contains the questions that you propose and our responses. I don't know what your preference would be, if you want us to go through these question-by-question today or if you would like to take them back and look over them and then we could talk about them at our next scheduled hearing which is next week. The Agency is happy to do whatever is most convenient for the Board.

MR. MCCAMBRIDGE: Give me a moment to review.

Off the record, please.

(Brief recess.)

MR. MCCAMBRIDGE: Let's go back on the record.

Does the Board's technical section have any questions on the Agency's answers to the queries?

MR. RAO: No, not at this time. We'll take another good look at it and get back to you.

MR. MCCAMBRIDGE: Ms. Burke?

MS. BURKE: No.

MR. MCCAMBRIDGE: I do have a couple. In question two, the question focused in on the use of the word certified because that is what appears in all of the federal regulations involving laboratories and the Agency explains that it isn't equivalent because of whatever approval process a sister state might have for their laboratory. The question is does that shift the potential meaning away from the USEPA language?

MS. OLSON: Can I just have our witnesses sworn before they answer?

MR. MCCAMBRIDGE: Okay. Swear the witnesses. Sorry. They should have been sworn before the testimony came in.

MS. OLSON: I just realized. I apologize.

(Witnesses sworn by court reporter.)

MR. SIDERS: Again, the USEPA when they developed their drinking water -- laboratory certification program used the term certification. The USEPA had continued to do that. Pretty much the term certified and accredited is used interchangeably. Most lab's states now say they accredit labs. So that term certified and accredited is interchangeable.

MR. MCCAMBRIDGE: Right. Because I've seen

certified used with regard to the analyses themselves.

MR. SIDERS: But most of it in this -- it's the laboratory is accredited or certified. Obviously, as part of that, they get accredited and certified for various methods. So those two terms are interchangeable.

MR. MCCAMBRIDGE: The question then would be how would this -- if this is an improved language, should this affect the existing identical and substance regulations in any way? I would request that with future rulemakings you take a look right now.

As I mentioned, the R14-8 proceeding is pending. The Board will consider a proposal for public comment November 21st because it involves methods. There is a lot there with the certification provisions. If there's some improvement that needs to be made to clarify the federal language for the Illinois context, please.

MS. OLSON: Can I ask a follow-up question?

Scott, do you know the Illinois EPA's intention for including a broader list of terms that means certified in our proposal?

MR. SIDERS: No. I mean, I would have to look at the 186. Is that what you're talking about?

MS. OLSON: Let me ask you this. Did we include registered accredited, licensed, or otherwise improved to include primacy states that may have a licensing program for laboratories and we didn't want the -- we didn't want there to be a hang up because one state may license labs whereas Illinois certifies labs?

MR. SIDERS: The Illinois EPA, our program actually accredits labs. The USEPA uses the word certified. Some states out there while they, yes, accredit or certify labs, they also issue a license as part of that process. So that's why again the term I think license was put in there.

We're just trying to cover all of our bases so we don't have a potential conflict based on the terminology a particular state might use.

MS. OLSON: And because we are trying to draft this particular section broadly to catch other primacy states, in your opinion would that affect the other parts of six-eleven where they're identical in substance?

MR. SIDERS: I don't think so.

MS. OLSON: Thank you.

MR. MCCAMBRIDGE: The second question is with regard to substantially equivalent as applied to a

sister state's approval program, or laboratory approval program, substantially equivalent to the Illinois statutory provision. How would you suggest that that determination is made?

MS. OLSON: Scott, can you handle that question, in light of the fact of the last sentence of our response?

MR. SIDERS: We looked at the term substantially equivalent and how it would be applied. Why we think it may give some degree of protection and discretion to us if, yes, say another state's certification or accreditation program is not compliant with the standards, they're not meeting the EPA's requirements for that, but that would be a really rare limited instance of that happening. So, other than that, the term substantial equivalent may be kind of difficult to come up with criteria for or apply so that's one of the things. We're willing to drop that term because it may present more problems than it solves.

MR. MCCAMBRIDGE: Another question comes to mind here. You add language to Section 611.359(a) that would -- conducted by a certified laboratory listed in Section 611.490(a). You're suggesting that the

certified laboratories be incorporated, listed into the Board's regulation?

MS. OLSON: I'll handle this question since this is a drafting issue that I did.

We're not suggesting that 490(a) lists every certified lab in the state. We're suggesting that 490 lists three types of labs and you have to be one of those three types of labs. So you have to be either a laboratory certified by Illinois EPA which is subsection one I believe. Subsection two, the laboratory certified by USEPA. And our proposal would add a third type of laboratory which is a sister state if there is no lab in Illinois. And, so, what I have here, I wrote certified laboratories listed, I meant listed as in one of those types. And the reason why we didn't choose to do certified as provided is because, unfortunately, they just didn't quite sync up because our certification rules are in part 186 of our Agency rules, they're not in Board rules.

MR. MCCAMBRIDGE: I have one further question. It's about -- I thought I saw a reference in one of the testimonies to a national laboratory accreditation. This was in your testimony, Mr. Siders, National Environmental Laboratory Accreditation Program,

NELAP. Do they have a listing of laboratories that are --

MR. SIDERS: NELAP is, like you said, it's a National Environmental Laboratory Accreditation Program and that is composed of various states that are NELAP recognized accrediting bodies under this TNI, the NELAC Institute.

Each one of the states that is a NELAP AB has the list of labs that it accredits and what they are accredited for. It also has a listing of what that state can accredit labs for, just like Illinois EPA does and on the TNI website they have a listing of all the NELAP accrediting bodies and they have a database they're developing which provides all the laboratories and what those labs are accredited for under NELAP. So each state has their own database and information like we do and, then, the TNI developed a national database to hold that information.

MS. OLSON: Scott, does NELAP certify labs?

MR. SIDERS: NELAP is part of TNI, but all the -- who actually does the accreditation are the states that are NELAP recognized accrediting bodies. Illinois EPA the NELAP recognizes the accrediting body. We do the accreditation. It's the state grants

accreditation, not TNI, not NELAP.

MS. OLSON: And to get NELAP certification, did EPA have to be approved by NELAP? Is that how it works?

MR. SIDERS: Yes. We have to be evaluated to make sure that we as a program comply with the standards, the applicable standards. And, then, if we do, then we are granted this recognition to be in the NELAP program which is a voluntary program.

MR. MCCAMBRIDGE: Do you have any further questions?

MR. RAO: No.

MR. MCCAMBRIDGE: Ms. Burke?

MS. BURKE: No.

MR. MCCAMBRIDGE: I will observe that I misspoke earlier. I believe our 14-8 is on for 11-7, is it not?

MS. BURKE: Uh-huh.

MR. MCCAMBRIDGE: So that means that by Monday you should see -- and if I'm not mistaken, there was one of the federal provisions in there. I have been in the habit of encountering these things through hazardous waste regulations and the drinking water regulations. I've been in the habit of trying to make

them as broad as it appears that USEPA intended and I don't believe that when they say certified by the state, USEPA necessarily intends only the state of Illinois.

The language that was put in that provision was intended to try to go follow through on what is USEPA's intent. That seems to conflict slightly with what you've submitted here today and I would request again whatever comments you may have.

MS. OLSON: I can ask a few questions right now, if you want of our witnesses to try to flush that out.

MS. OLSON: If you would.

MS. OLSON: Sure. Either Mike or Scott, whoever wants to answer this question.

Can you explain why we didn't just add primacy sister states as an option and why we structured our rule such that it tiered, so Illinois EPA would be one certifying body or USEPA and, then, the third tier would be when Illinois EPA is not certifying for that parameter?

MR. SIDERS: First, the way the Illinois EPA lab, environmental lab accreditation is set up and the way other states work is that if you're a laboratory in Illinois and you want to get certification or be

accredited for a drinking water parameter to do tests you have to come to the Illinois EPA. You can't just say you're a lab in Chicago, you can't go off to Indiana or Florida to be granted accreditation. First come to the Illinois EPA and then, historically, for -- like for radiochemistry some labs in Illinois that might have been accredited by the Illinois emergency management Agency for radiochemistry would also -- could go to the USEPA to get accredited. So we want to keep in that order of things. First the Illinois EPA and then if not Illinois EPA, the USEPA. Then if we don't offer accreditation for it, like for radiochemistry, there's nobody in the state of Illinois that offers radiochemistry certification, then and only then you can go to another state. I don't know if that answers it.

MR. RAO: USEPA doesn't accredit for radio -- or do they?

MR. SIDERS: That is yet to be determined. That's kind of an uncertain thing, kind of influx. The USEPA Region V had been granting certification to laboratories for radiochemistry in drinking water. A lab might get a state certification for drinking water, then they would apply to the USEPA and Region V was doing that. We're not sure if Region V is going to be

doing that for commercial labs anymore. They may be doing it for primacy state labs. Still influx, so we're not sure where the USEPA stands right now. But what we know is a lot of the certifications that USEPA granted to these commercial labs they will over time expire.

MS. OLSON: Scott, can you tell us how the laboratory certification program is funded in Illinois for EPA?

MR. SIDERS: For the Illinois EPA it's totally fee based.

MS. OLSON: So if states are allowed -- if laboratories are allowed to get accreditations from different states and not from Illinois EPA and not have to -- and still be able to submit results to Illinois EPA with no hierarchy, can you foresee a threat to our certification program?

MR. SIDERS: Yes. It would potentially dry up. It depends, I mean right now we accredit labs within Illinois but also under NELAP. If a laboratory gets accredited in Florida by the Florida Department of Health under NELAP, they can submit an application to us for what we call secondary accreditation and then we can accredit them for the things that we offer accreditation for. So, yes, potentially the fee, the amount of fees

we collect would go down substantially and our program is fee supported and the fees are supposed to be set just to support our program, you know, the amount of costs and if it goes down we may not be able to provide all the services or have the head count.

MR. MCCAMBRIDGE: Do I understand that the consequence would be that if the Illinois laboratory accreditation program were to flounder and collapse, we could no longer maintain federal primacy?

MR. SIDERS: Under primacy, if the state primacy lab does not do all the testing, which they do not, we are bound and obligated to have a certification program and that could potentially risk primacy.

MR. MCCAMBRIDGE: Does anyone have anything further? In that case, we will recess.

We are scheduled to convene a hearing again next Wednesday the 13th at I believe 1:00 p.m. in the afternoon at the Board's Springfield office. At this point we're uncertain as to who will act as hearing officer, we might have stand in, or who the attending board member maybe.

Anything else? In that case we recess.

(Hearing adjourned at 1:30 o'clock p.m.)

C E R T I F I C A T E

DAVID J. DEMSKI, being first duly sworn on oath says that he is a court reporter doing business in the City of Chicago; that he reported in shorthand the proceedings given at the taking of said hearing on the 5th day of November, 2013, and that the foregoing is a true and correct transcript of his shorthand notes so taken as aforesaid, and contains all the proceedings given at said hearing.

David J. Demski

DAVID J. DEMSKI
CSR# 084-004386

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	R14-09
AMENDMENTS TO PRIMARY	)	(Rulemaking- Water)
DRINKING WATER STANDARDS:	)	
35 Ill. Adm. Code 611.490	)	

TESTIMONY OF SCOTT D. SIDERS

My name is Scott Siders and I am a Laboratory Accreditation Officer within the Illinois EPA (IEPA), Division of Laboratories' Environmental Laboratory Accreditation Program. I have over thirty years of related experience, with twenty-four years of service with the IEPA, Division of Laboratories in various capacities (see attached resume). Prior duties at the IEPA included: Contract Laboratory Program Administrator and Divisional Quality Assurance Officer. I have been a Laboratory Accreditation Officer since 2004. As a Laboratory Accreditation Officer, I have responsibility for all aspects of laboratory accreditation.

The IEPA is a National Environmental Laboratory Accreditation Program (NELAP)-Recognized Accrediting Body and certifies environmental testing laboratories for chemical analyses done not only under the SDWA but also the CWA and RCRA. Under NELAP, the IEPA provides both primary (in-state) and secondary (out-of-state) certifications. Primary certified laboratories are audited by the IEPA and also required to analyze proficiency testing samples. The IEPA grants secondary certification based on recognition of the out-of-state laboratory's primary certification granted by another state NELAP-Recognized Accrediting Body. There are thirty-one primary certified laboratories within Illinois and fifty secondary certified laboratories outside of Illinois. Of the thirty-one primary certified laboratories, twenty are certified for drinking water testing. The IEPA only offers certification for chemical (i.e.,

inorganic, organic and asbestos) methods and analytes and does not offer any certification for radiochemistry or microbiology.

Until recently, radiochemistry certification was done by the Illinois Emergency Management Agency (IEMA) and USEPA Region V. IEMA no longer offers certification for radiochemistry, and USEPA Region V has significantly reduced its certification program. Microbiology certification is done by the Illinois Department of Public Health (IDPH). The IDPH is also preparing to offer certification for Cryptosporidium in drinking water, but does not yet offer this certification. Under the proposed amendments, the IEPA would be able to accept sample results from laboratories certified by other primacy states for radiochemistry or Cryptosporidium if no laboratories have an Illinois certification.

The proposed changes to Section 611.490 temporarily solves IEPA's dilemma it now faces in lacking Illinois certified laboratories for all SDWA contaminants. The proposed changes to Section 611.490 present the most logical and efficient programmatic and regulatory means to address the problem of no certification being offered by the IEMA, or IEPA for radiochemistry. To add radiochemistry certification at the IEPA would require an expansion of what we offer certification for under NELAP, proposing changes to IL Admin. Codes Part 185 (Laboratory Accreditation Fees) and Part 186 (Accreditation of Laboratories); developing new procedures and documents; and to attend training for radiochemistry laboratory certification. These changes take time, and the proposed amendments give the Illinois EPA the necessary time to decide how best to move forward.

The proposed amendments would allow the Agency to accept radiochemistry test results from laboratories that are already certified by other states (e.g., NELAP states) or the USEPA when those accreditation programs are deemed substantially equivalent to the standards used by

the IL ELAP. Many of the IEPA certified laboratories that perform chemical analyses for the SDWA would, in my opinion, also benefit from this proposal since they to depend on having the ability to subcontract any radiochemistry testing needed by a Public Water Supply client in Illinois to a certified laboratory. The IEPA strongly supports the proposed changes to Section 611.490. Thank you for allowing for me to testify.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Scott D. Siders
Scott D. Siders

DATED: _____

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THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	R14-09
AMENDMENTS TO PRIMARY	)	(Rulemaking- Water)
DRINKING WATER STANDARDS:	)	
35 Ill. Adm. Code 611.490	)	

TESTIMONY OF MICHAEL B. CRUMLY

Qualifications and Introduction

Hello, my name is Michael Crumly. I graduated in 1987 from Southern Illinois University at Carbondale with a bachelor's degree in Biological Science and a minor in Zoology. I started working for the Drinking Water Compliance Section, Illinois Environmental Protection Agency (Illinois EPA) as a Life Science Career Trainee in December 1987. Several times throughout the 25 years of ongoing service, I was promoted. With each new title came increased responsibilities. In April 1996, I was promoted to a management position as Manager of the Drinking Water Chemical Monitoring Sub-Unit (Bureau of Water) and in March 2001 promoted to Manager of the Drinking Water Compliance Unit (Bureau of Water). Most recently the Drinking Water Compliance Unit was involved in an Agency/Bureau of Water re-organization. As of today, I hold the position of Manager of the Drinking Water Compliance Assurance Section for the Division of Public Water Supplies. My resume is attached as Exhibit 1.

As Manager of the Compliance Assurance Section, I oversee the activities of six technical and one support staff on a daily basis. This Section's responsibility is to implement the drinking water bacteriological and chemical sampling programs pursuant to the federal Safe Drinking Water Act (SDWA) and State of Illinois equivalent Rules and Regulations. In addition, I

coordinate with other Illinois EPA managerial staff when applicable. I initiate and review formal enforcement activities (Non- compliance Advisories and Notice of Violations) to the community water supplies, and coordinate the enforcement follow- up actions. I administer job evaluations to staff, develop and maintain cooperative working relationships and delegate job responsibilities. I also develop procedure protocol for staff and management.

Today I would like to address the certification of laboratories for drinking water regulated contaminants currently not certified by or not covered by Illinois EPA and IDPH's laboratory certification programs. Failure to have laboratories certified in Illinois may result in increased rates of non-compliance for community public water systems and therefore jeopardize public health.

Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) defines a public water system (PWS) as one that serves piped water to at least 25 persons or 15 service connections for at least 60 days each year. The United States Environmental Protection Agency (USEPA) established the Public Water System Supervision (PWSS) Program under the authority of the 1974 Safe Drinking Water Act (SDWA). Under the SDWA and the subsequent amendments, USEPA sets national limits on contaminant levels in drinking water to ensure that the water is safe for human consumption. USEPA must also established pollutant-specific minimum specific testing requirements for community public water systems. In Illinois, USEPA has delegated primacy to the Illinois Environmental Protection Agency (Illinois EPA) to oversee that federal law is met. The Illinois EPA further divided authority between the Illinois EPA and the Illinois Department of Public

Health (Illinois DPH). Illinois EPA has been designated as the lead Agency for primary enforcement authority and oversees the community public water system (CWS) program. CWS serve 15 or more year round service connections or 25 or more year round residents. Illinois DPH oversees the non-community public water supplies. Generally speaking, CWS in Illinois have excellent compliance rates. During 2012, the percentage of CWS in compliance year round with all health requirements (maximum contaminant levels, treatment techniques, or public education) was 96%.

CWS typically monitor for bacteria, protozoa and viruses, nitrate and nitrite, volatile organic compounds (e.g., benzene), synthetic organic compounds (e.g., pesticides), inorganics (e.g., arsenic), lead & copper, and radionuclides. When it is time for a CWS to monitor for a contaminant or group of contaminants, they are notified by Sample Demand Letter from the Illinois EPA. After the CWS is notified, the CWS contact a laboratory for sample bottles and subsequently perform the analysis. Laboratories providing these analytical services must be an Illinois EPA, IDPH, or USEPA accredited laboratory for the method being used to perform the analysis in drinking water. Sample analysis is often complicated and not all laboratories are accredited for all contaminants. Once the sample is analyzed, results are sent to the CWS which in turn submit the results to the Illinois EPA for compliance determinations. Often, the CWS request the laboratory to directly send the results to the Illinois EPA saving the CWS a step. Results must be received by the Illinois EPA within 10 days following a monitoring period. The Illinois EPA receives tens of thousands sample results from accredited laboratories each year.

With dwindling financial resources, the ongoing support to maintain an Illinois certification program for every monitoring program (including radiochemistry) has become problematic. When Illinois first received primary enforcement responsibility, the primary state laboratory for radiochemistry was located at the Illinois Department of Nuclear Safety (IDNS); this laboratory received thousands of samples from community water supplies. The number of laboratories conducting radiological analysis has drastically decreasing since then. The Illinois Emergency Management Agency (IEMA) replaced IDNS and maintained Illinois' primacy radiochemistry laboratory, certified by USEPA, until 2012. IEMA notified Illinois EPA in January 2012 that it no longer wished to remain as the state primacy radiochemistry laboratory and maintain USEPA certification because it was not receiving very many samples to analyze. At the same time, IEMA notified Illinois EPA that only one laboratory in Illinois had an Illinois certification for radiological analysis of drinking water samples. This laboratory's certification has since expired.

In addition, the number of laboratories that USEPA is willing to certify for radiochemistry has also declined. USEPA Region V no longer grants certification to all laboratories seeking radiochemistry certification either. Instead, the USEPA office in Cincinnati Ohio will only certify the state's primacy radiological laboratory. Illinois EPA believes that USEPA has reduced the scope its certification program because of the decreasing number of laboratories seeking certification, the costs to certify each laboratory and the agency's limited resources.

Private laboratories wishing to be certified for the first time or re-certified for radionuclide analysis are not able to because the Illinois EPA, IDPH, or USEPA no longer have a certification team/ expertise for that monitoring program. As of today, Illinois does not have a laboratory with current certification for the regulated radionuclides. Even though there is not an Illinois laboratory, CWS are still required to monitor and have samples analyzed by a certified laboratory. This primacy deficiency has been noted in the Illinois EPA/USEPA Annual Resource Deployment Plan agreement between Illinois EPA and USEPA. Illinois has tentatively committed to pursue regulatory changes to accept third party certification of radiological samples as part of their Performance Partnership Agreement with USEPA,

Conclusion

This concludes my pre-filed testimony. I will supplement the testimony as needed during the hearing and am happy to address any questions.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: _____
Michael B. Crumly

DATED: 10-19-13

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ILLINOIS EPA RESPONSES TO HEARING OFFICER ORDER DATED OCTOBER 24, 2013

Questions Relative to the Need for the Amendments

1. Does the Agency intend that the amendment allow use of laboratories certified by a sister state for non-radiological parameters also?

   Agency Response: Yes.

2. As to the radiological parameters, how many PWSs are reporting radiological analytical results to the Agency? Results of how many radiological analyses are reported to the Agency each year? What portion of those results are reported from a laboratory outside Illinois?

   Agency Response: There are 1069 community water systems (CWS) that must monitor for radionuclides. However, many are on a reduced monitoring frequency of every 3, 6, or nine years. During 2012, 1,748 radionuclide analyses were received. So far in 2013, 1,254 have been received (roughly 95% were from an outside Illinois laboratory both years).

3. Absent the amendments, how many laboratories are available to perform radiological analyses? If not all available laboratories are certified for all radiological parameters, can the Agency report this information on a parameter-by-parameter basis?

   Agency Response: In Illinois, there are no laboratories currently holding Illinois certification for radiological parameters.

4. To date, has any PWS in Illinois failed to report results of required radiological analyses due to the shortage of certified laboratories? If not, does the Agency foresee that a failure to report will result in the next few years?

   Agency Response: Community water supplies are not failing to report results, but not all community water supplies are sending their radionuclide samples to a radionuclide certified laboratory. Eleven community water supplies are reporting results from an Illinois laboratory, ATI Environmental Inc. Midwest Lab in Northbrook, in which Illinois certification expired in December 2012. ATI Environmental Inc. Midwest Lab is not certified by USEPA. Without the proposed changes, the Illinois EPA does foresee a shortage of acceptable laboratories that perform radiological analysis.

Questions Relative to Parallel Laboratory Certification Provisions

1. Does the Agency intend that a supplier may use a laboratory certified by a sister state only "when no laboratory has been certified [by the Agency" pursuant to subsection (a)(1)"? If so, would not use of "where" (situational sense) in place of "when" (time sense) enhance the clarity of the text?

   Agency Response: The Agency intends to limit the instances when an out-of-state laboratory can be used to times when no laboratory is certified by Illinois for a particular contaminant. The Illinois EPA does not believe the language as proposed needs to be clarified as to whether a situation sense ("where") or time sense ("when") is appropriate. Either method is acceptable.

2. Would use of "certified," which is consistently used in all relevant Illinois drinking water provisions and their federal counterparts, avoid the possible ambiguity that something different is intended here? If there is no possible ambiguity, how does the addition of "registered, accredited, licensed, or otherwise approved" enhance the provision?

   Agency Response: The Illinois EPA does not think substituting "certified" for "certified, registered, accredited, licensed or otherwise approved" will enhance the proposed language. The Agency has proposed the language "certified, registered, accredited, licensed or otherwise approved" because other primacy states may not have a "certification" program, but may have a licensing program or an accreditation program. The purpose of this language is to include all types of programs conducted by primacy states to approve laboratories.

3. Since USEPA confers authority to certify laboratories to a primacy state based on the fact that that state has existing authority and criteria adequate for the task (*see* 40 C.F.R. 142.10(b)(3)(i)), as 415 ILCS 5/4(o) confers on the Agency, is it necessary to retain the language "are substantially equivalent to certification standards under Section 4(o) of the Act"? Does the "substantially equivalent" language make the laboratory certification more stringent than do the federal requirements inherent to USEPA granting primacy to a sister state?

   Agency Response: The Illinois EPA modeled the "substantially equivalent" language after Wisconsin's regulations, Section NR149.05. "Substantially equivalent" provides the Agency some degree of protection and/or discretion in the instance where a state, federal or non-governmental accrediting program may not be, at a given time, in good standing or complaint with applicable standards. State certification programs, even if granted primacy, do tend to vary in their requirements from state to state because some states choose to have additional or more stringent requirements that the USEPA or

other states. Although the Agency believes this language important, it does not object to its removal

4. Would amendment of 35 Ill. Adm. Code 611.490(a), as requested by the Agency, without corresponding amendments to 611.359(a) and (a)(4), 611.381(b)(2), 611.531(a), 611.611(c), 611.646(q), 611.648(s)(1), 611.971(b), 611.1005(a) and (b), and 611.1082(b), create inconsistencies in the regulations?

Agency Response: Yes.

5. If there is a potential for inconsistency such that revision of one or more of these provisions is desirable, would substitution of the existing language with a phrase like "certified as provided in Section 611.490(a)" resolve the inconsistency?

Agency Response: The Agency believes potential revision of these sections is necessary. The Agency does not think the phrase "certified as provided in section 611.490(a)" would resolve the inconsistency because section 611.4910(a) does not provide for certification of laboratories. Instead, Section 611.490(a) states how a community water supply can demonstrate compliance with subparts G, K through O, Q and S of Part 611. Instead, the Agency proposes;

Section 611.359 Analytical Methods

Analyses for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature must be conducted using the methods set forth in Section 611.611(a).

a) Analyses for lead and copper performed for the purposes of compliance with this Subpart G must only be conducted by a certified laboratory listed in Section 611.490(a) ~~laboratories that have been certified by USEPA or the Agency~~. To obtain certification to conduct analyses for lead and copper, laboratories must do the following:

1) Analyze performance evaluation samples that include lead and copper provided by USEPA Environmental Monitoring and Support Laboratory or equivalent samples provided by the Agency;

2) Achieve quantitative acceptance limits as follows:

A) For lead: ±30 percent of the actual amount in the performance evaluation sample when the actual amount is greater than or equal to 0.005 mg/ℓ (the PQL for lead is 0.005 mg/ℓ);

B) For copper: ±10 percent of the actual amount in the performance evaluation sample when the actual amount is greater than or equal to 0.050 mg/ℓ (the PQL for copper is 0.050 mg/ℓ);

3) Achieve the method detection limit (MDL) for lead (0.001 mg/ℓ, as defined in Section 611.350(a)) according to the procedures in 35 Ill. Adm. Code 186 and appendix B to 40 CFR 136: "Definition and Procedure for the Determination of the Method Detection Limit – Revision 1.11", incorporated by reference in Section 611.102(c). This need only be accomplished if the laboratory will be processing source water composite samples under Section 611.358(a)(1)(D); and

4) Be currently certified ~~by USEPA or the Agency~~ to perform analyses to the specifications described in subsection (a)(1) of this Section.

Section 611.381 Analytical Requirements

a) . . .

b). . .

2) Analyses under this Section for DBPs must be conducted by a certified laboratory listed in Section 611.490(a) ~~laboratories that have received certification by USEPA or the Agency~~ except as specified under subsection (b)(3) of this Section. To receive certification to conduct analyses for the DBP contaminants listed in Sections 611.312 and 611.381 and Subparts W and Y of this Part, the laboratory must fulfill the requirements of subsections (b)(2)(A), (b)(2)(C), and (b)(2)(D) of this Section.

Section 611.531 Analytical Requirements

The analytical methods specified in this Section, or alternative methods approved by the Agency pursuant to Section 611.480, must be used to demonstrate compliance with the requirements of only 611.Subpart B; they do not apply to analyses performed for the purposes of Sections 611.521 through 611.527 of this Subpart L. Measurements for pH, temperature, turbidity, and RDCs must be conducted under the supervision of a certified operator. Measurements for total coliforms, fecal coliforms and HPC must be conducted by a certified laboratory listed in Section 611.490(a)~~laboratory certified by the Agency to do such analysis~~. The following procedures must be performed by the following methods, incorporated by reference in Section 611.102:

Section 611.611 Inorganic Analysis

...

c) Analyses under this Subpart N must be conducted by a certified laboratory listed in Section 611.490(a)~~laboratories that received approval from USEPA or the Agency~~. The Agency must certify laboratories to conduct analyses for antimony, arsenic (effective January 23, 2006), asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium, and thallium if the laboratory does as follows:

Section 611.646 Phase I, Phase II, and Phase V Volatile Organic Contaminants

...

q) Analysis under this Section must only be conducted by a laboratory listed in Section 611.490(a) that has been certified ~~laboratories that have received certification by USEPA or the Agency~~ according to the following conditions:

Section 611.648 Phase II, Phase IIB, and Phase V Synthetic Organic Contaminants

...

s) Laboratory certification.

1) Analyses under this Section must only be conducted by a laboratory listed in Section 611.490(a)~~laboratories~~ that has been certified ~~have received approval by USEPA or the Agency~~ according to the conditions of subsection (s)(2) of this Section.

Section 611.971 Routine Monitoring

...

b) Analytical methods. A supplier must use an approved method listed in Section 611.381 for TTHM and HAA5 analyses in this Subpart Y. Analyses must be conducted by laboratories that have received certification ~~by USEPA or the Agency~~ as specified in Section 611.381.

Section 611.1005 Source Water Monitoring Requirements: Approved Laboratories

a) Cryptosporidium. A supplier must have Cryptosporidium samples analyzed by a laboratory that is approved under USEPA's Laboratory Quality Assurance Evaluation Program for Analysis of Cryptosporidium in Water or a certified laboratory listed in Section 611.490(a) ~~laboratory~~ that has been certified for Cryptosporidium analysis ~~by the Agency~~.

b) E. coli. Any laboratory certified ~~by the USEPA~~, by the National Environmental Laboratory Accreditation Conference, or by a certified laboratory listed in Section 611.490(a) that has been certified ~~the Agency~~ for total coliform or fecal coliform analysis pursuant to Section 611.531 is approved for E. coli analysis pursuant to this Subpart Z when the laboratory uses the same technique for E. coli that the laboratory uses for the purposes of Section 611.531.

40 CFR 141.852:

(b) Laboratory certification. Systems must have all compliance samples required under this subpart analyzed by a certified laboratory listed in Section 611.490(a) ~~a laboratory certified by the EPA or a primacy State to analyze drinking water samples~~. The laboratory used by the system must be certified for each method (and associated contaminant(s)) used for compliance monitoring analyses under this rule.

6. Would use of the language, "certified by USEPA, the Agency, or a sister primacy state," as will soon be proposed in the Revised Total Coliforms Rule resolve any inconsistency between that provision and the Agency-proposed amendment to 35 Ill. Adm. Code 611.490(a)?

Agency Response: The Board's proposed language "certified by USEPA, the Agency or a sister primacy state" is too broad. Under this language, a community water supply could choose among the three types of certified laboratories equally. Under the Agency's proposal, a sister primacy state certified laboratory would only be acceptable if there were no laboratories holding an Illinois certification.

7. Would use of the succinct language, "certified by USEPA, the Agency, or a sister primacy state," in 35 Ill. Adm. Code 611.490(a) (and any of the other parallel provision that may be inconsistent) adequately address the Agency's concerns?

Agency Response: No. See response to Board question 6 above.

8. What is "USEPA's Laboratory Quality Assurance Evaluation Program for Analysis of Cryptosporidium in Water"? Does this program confer laboratory certifications? Is this program internal to USEPA? Is certification by this program the same as certification by USEPA? Are there similar programs or program elements for the purposes of analyses for other drinking water contaminants?

Agency Response: It is a USEPA program under the Long Term 2 Enhanced Surface Water Treatment Rule that requires public water supplies to use

approved (certified) laboratories when conducting Cryptosporidium monitoring. Under this program, states can offer laboratory certification. While this program has unique method and quality control requirement specific to this test, the program is comparable to the USEPA's general certification program. The IDPH is in rule making process to offer this certification.

9. What is the "National Environmental Laboratory Accreditation Conference"? Does this conference confer laboratory certifications? Is this conference internal to USEPA? Is certification by this conference the same as certification by USEPA? Does this conference certify laboratories for the purposes of analyses for other drinking water contaminants?

Agency Response: NELAC no long exists. NELAC merged with International Association of Environmental Testing Laboratories to form The NELAC Institute (TNI). Under TNI, NELAP states are NELAP accrediting bodies, and they grant accreditation. The USEPA has recognized NELAP accreditation as equivalent to USEPA drinking water certification. In reality NELAP accreditation is much more comprehensive that the USEPA program. As part of NELAP, states do offer accreditation for drinking water under the SDWA. TNI is a non-profit and is not part of the USEPA. USEPA employees participate in TNI and the USEPA does provide substantial grants to TNI.