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STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
October 24, 2013

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

HEARING OFFICER ORDER

The Board opened this docket pursuant to Sections 17(a), 27, and 28 of the Environmental Protection Act (Act) (415 ILCS 5/17(a), 27, and 28 (2012)) based on a September 19, 2013 rulemaking proposal filed by the Illinois Environmental Protection Agency (Agency). The Agency separately submitted the text of its proposed amendment on September 24, 2013.

By its rulemaking proposal of September 19, 2013, as supplemented on September 24, 2013, the Agency seeks amendment of 35 Ill. Adm. Code 611.490(a) to allow the use of a laboratory certified by a sister state or an agency of the federal government if the criteria for certification of that laboratory are substantially equivalent to those of Section 4(o) of the Act. 415 ILCS 5/4(o) (2012). The Agency's petition is limited to this single provision.

Questions Relative to the Need for the Amendments

The Agency has explained that the purpose of the amendments is to address the shortage of laboratories needed to perform radiological analyses. Statement of Reasons at 4. The proposal, however, does not appear to be limited to certification for analyses of radiological parameters. These facts give rise to the following questions:

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

Questions Relative to Parallel Laboratory Certification Provisions

This hearing officer has reviewed the Illinois Primary Drinking Water Standards in 35 Ill. Adm. Code 611 in their entirety. The hearing officer observes that several parallel provisions to 35 Ill. Adm. Code 611.490(a) would appear to limit analyses to a laboratory certified by USEPA or the Agency. These provisions are the following:

Section 611.359(a) (Lead and Copper Rule)	“certified by USEPA or the Agency”
Section 611.359(a)(4) (Lead and Copper Rule)	“certified by USEPA or the Agency”
Section 611.381(b)(2) (Disinfectants and Disinfectant By-Products Rule)	“certified by USEPA or the Agency”
Section 611.531(a) (Surface Water Treatment Rule)	“certified by the Agency”
Section 611.611(c) (Inorganic contaminants)	“received approval from USEPA or the Agency”
Section 611.646(q) (Volatile organic contaminants)	“certification by the Agency”
Section 611.648(s)(1) (Synthetic organic contaminants)	“approval by the Agency”
Section 611.971(b) (Stage 2 Disinfection By- Products Rule)	“certified by the Agency”
Section 611.1005(a) (Enhanced Surface Water Treatment Rule)	“approved under USEPA’s Laboratory Quality Assurance Evaluation Program for Analysis of Cryptosporidium in Water or a laboratory that has been certified for Cryptosporidium analysis by the Agency”
Section 611.1005(b) (Enhanced Surface Water Treatment Rule)	“certified by the USEPA, by the National Environmental Laboratory Accreditation Conference, or by the Agency”

Section 611.1082(b)
 (Language in a draft of the
 Revised Total Coliforms Rule—
 soon to be proposed in SDWA
Update, USEPA Amendments
(January 1, 2013 through June
30, 2013), R14-8 to correspond
 with 40 C.F.R. 141.852(b)
 (2013))

“certified by USEPA, the Agency, or a sister
 primacy state”
 (to correspond with “certified by the EPA or a
 primacy State”)

These several parallel provisions raise a number of questions. This hearing officer requests that the Agency address the following questions at hearing:

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?
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?
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?
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?
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?
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)?

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?
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?
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?

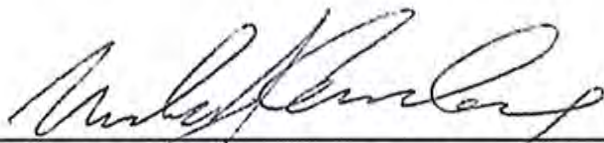
Corrections that Will Be Necessary Before Proposal

This hearing officer has examined the text of the Agency-proposed amendments. There are errors in the format of the text that the Board must make before the Office of the Secretary of State will publish the proposal. The Board will correct those errors as indicated in the following table:

611 source note	Add this proceeding to the main source note
611.490(a)(2)	Overstrike the ending conjunction “or.”
611.490(a)(4)	Properly format the renumbering to subsection (a)(4) by adding an overstruck “3” and underlining “4” in the subsection designation.

The Agency may wish to comment on the indicated *Illinois Administrative Code* format corrections at hearing.

IT IS SO ORDERED.



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