

# ORIGINAL

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## ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
AMENDMENTS TO PRIMARY ) R14-9  
DRINKING WATER STANDARDS: ) (Rulemaking -  
35 ILL. ADM.CODE 611.490 ) Public Water Supply)

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STATE OF ILLINOIS  
Pollution Control Board

The following is the transcript of a hearing held in the above-captioned matter, taken stenographically by Gary J. Maninfior, CSR, RPR, a notary public within and for the County of Coles and State of Illinois, before Michael J. McCambridge, Hearing Officer, at the Illinois Pollution Control Board, Board Conference Room, 1021 North Grand Avenue East, Springfield, Illinois, on the 13th day of November, A.D., 2013, commencing at 1:00 p.m.

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PRESENT:

Hearing Taken Before:  
Illinois Pollution Control Board.  
100 West Randolph Street, Suite 11-500.  
Chicago, IL 60601  
(312) 814-6924  
BY: Michael J. McCambridge, Hearing Officer

Attending Board Member:

Deanna Glosser, PhD., Chairman

Also Present Board Member:

Connie Newman, Executive II

APPEARANCES:

Illinois Environmental Protection Agency  
1021 N. Grand Avenue  
Springfield, IL 62794-9276  
(217) 782-5544  
BY: Joanne Olson, Assistant Counsel  
On Behalf of Agency

Agency Witnesses:

Michael Crumly, Compliance Assurance Section  
Scott Siders, Labs Accreditation Unit,  
Division of Laboratories

Also Present Agency Members:

Larry Mraz, Assistant Counsel  
James Jennings, Assistant Counsel  
Jim Stivens, Assistant Counsel  
John South, Labs Accreditation Unit, EPS III  
Janet Cruse, Labs Accreditation Unit, LQS II  
Kyle Rominger, Deputy Counsel

1                   Mr. McCambridge: Let the record  
2 reflect this is the myrick and economic hearing in  
3 Amendments to Primary Drinking Water Standards, 35  
4 Ill. Adm. Code, 611.490, Docket R14-9. This is  
5 the second hearing. My name is Mike McCambridge.  
6 I'm the hearing officer. Attending with me is  
7 chairman Deanna Glosser, the attending board  
8 member.

9                   Would you like to do the introducing?

10                   Ms. Olson: Sure. Thank you.  
11 My name is Joanne Olson, I'm the assistant counsel  
12 at Illinois E.P.A. and with me today I brought two  
13 agency witnesses.

14                   Mr. Crumly: I'm Michael Crumly with  
15 Compliance Assurance section.

16                   Mr. Siders: I'm Scott Siders with the  
17 Labs Accreditation Unit, Division of Laboratories.

18                   Mr. McCambridge: Would the people in  
19 the back like to introduce themselves for the  
20 record?

21                   Mr. Mraz: Larry Mraz, Attorney,  
22 IEPA.

23                   Mr. Jennings: James Jennings,  
24 Assistant Counsel, Illinois EPA.

1                   Mr. Stivens: Jim Stivens, Assistant  
2 Counsel, Illinois EPA.

3                   Mr. South: John South, member of the  
4 Labs Accreditation Unit.

5                   Ms. Cruse: Janet Cruse, member of the  
6 Accreditation Unit, Laboratory Quality Specialist.

7                   Mr. McCambridge: And also in the  
8 room is Connie Newman with the Pollution Control  
9 Board.

10                   We had a hearing the 5th, that was  
11 last Wednesday, if I'm not mistaken. I have a  
12 couple of things to mention out of that. I  
13 received the transcript. We are having it  
14 corrected. The testimonies that were supposed to  
15 have been entered into the record as if read were  
16 not in the original of the witness, or of the  
17 exhibit submitted by the agency was not included  
18 with the transcript. We're working to get that  
19 corrected.

20                   Another thing we checked yesterday and  
21 again today, we have no response right now from  
22 the Department of, what is it, DECA is what they  
23 used to be, on the economic impact study. So we  
24 have no word either way. Of course, the purpose

1 of this hearing and the one we had last week is  
2 also to take any testimony with regard to economic  
3 impact that anyone would wish to submit for the  
4 record.

5 While I was making this statement  
6 another person walked in. Could you identify  
7 yourself for the record?

8 Mr. Rominger: Kyle Rominger, Illinois  
9 EPA.

10 Mr. McCambridge: Very good. Ms.  
11 Olson, does the agency have anything that they  
12 would like to add to the record we have assembled?

13 Ms. Olson: Not at this time. We  
14 would like to rest on the testimony that we  
15 pre-filed and entered into the record last  
16 hearing, and the exhibit that we entered, Exhibit  
17 Number 1, and if the board or the hearing officer  
18 or any members present have any questions we would  
19 be happy to answer them.

20 Mr. McCambridge: I do have a couple.

21 Ms. Olson: Sure.

22 Mr. McCambridge: We discussed, oh,  
23 the language. The agency, and this is Exhibit 1,  
24 although it's not numbered in my hand. The agency

1 suggested in a couple segments to add language to  
2 the effect of a certified laboratory listed in  
3 Section 611.490A. We last week listed that there  
4 is going to be no list of that individual  
5 laboratories, that the agency intended that there  
6 would be three classes identified in Section  
7 611.490A. The agency would have no objection to  
8 language that would more clearly say laboratories  
9 of the types identified in 611.490A or classes  
10 identified?

11 Ms. Olson: Having not seen the  
12 language I can't say whether or not we would have  
13 an objection. But language such as laboratories  
14 described in 611.490, classes of laboratories,  
15 changes like that would be satisfactory.

16 Mr. McCambridge: Very good. Also an  
17 issue was raised about the, I guess, the approval  
18 in 611.490. I can't remember the exact language.  
19 I'm not finding it at the moment.

20 Oh, yes, substantially equivalent to  
21 certification standards under Section 40 of the  
22 Act. Historically in the drinking water rules  
23 where U.S. E.P.A. has provided that decisions are  
24 made on a case by case basis. We have the

1 mechanism of a special exception permit. That is  
2 basically the agency is making a permit decision  
3 that is appealable to the board.

4 Would the agency object to the  
5 determination that an out-of-state laboratory is  
6 acceptable for use?

7 Mr. Crumly: It would probably be the  
8 best bet if I would defer that until I have a  
9 chance to talk to a couple of people here.

10 Ms. Olson: Last week the agency stated  
11 that it would not object to the deletion of that  
12 language.

13 Mr. McCambridge: But your objective  
14 is to make sure that the certification occur  
15 according to the state criteria that are  
16 statutorily required of the agency?

17 Ms. Olson: That is correct, and in  
18 looking at the board's questions that were  
19 presented to the agency and having many  
20 discussions amongst our technical staff we  
21 concluded that U.S. E.P.A. is granting primacy  
22 enforcement responsibility to our sister states  
23 and if U.S. E.P.A. has not withdrawn primacy or  
24 questioned their primacy and the requirement that

1           they have a laboratory certification program the  
2           sister states have gotten the approval of U.S.  
3           E.P.A. and we would be comfortable resting,  
4           accepting our data on the U.S. E.P.A.'s approval  
5           of our sister states.

6                     Mr. McCambridge: But there would be a  
7           separate approval by the agency, because I believe  
8           the agency maintained that there would have to be  
9           no laboratory within the Illinois or approved by  
10          the Illinois E.P.A. already for that pollutant or  
11          contaminant, or sorry, not pollutant, contaminant.

12                    Ms. Olson: That is correct, our goal  
13          is to open up the number of laboratories available  
14          to our community water supplies in the event that  
15          no laboratory has obtained an Illinois  
16          certification for a particular contaminant.

17                    Mr. McCambridge: So in 611.490A we  
18          will be identifying three classes or types of  
19          that. If one is approved by U.S. E.P.A.; the  
20          second is approved by the agency; the third is  
21          approved by a sister state under defined criteria  
22          that, I believe you wish that the agency would be  
23          making an approval there, that laboratory be used?

24                    Ms. Olson: We had initially proposed

1           that the agency would evaluate the certification  
2           in the other primacy enforcement states, and that  
3           is where the substantially equivalent language  
4           comes from. However, we have acknowledged that  
5           this requirement may not be necessary because U.S.  
6           E.P.A. has given that state primacy enforcement  
7           responsibility. It has approved their  
8           certification programs.

9                        The other thing I would like to  
10           mention is that, yes, there are three classes that  
11           you mentioned: U.S. E.P.A., and Illinois E.P.A.  
12           and sister states with primacy enforcement.  
13           However, the Illinois E.P.A. would like to stress  
14           that the third category not be treated equally,  
15           and what I mean by that is states that have  
16           accredited labs so other primacy states,  
17           laboratories accredited from those primacy states  
18           be allowed to be used for Illinois community water  
19           supplies only when Illinois E.P.A. has not  
20           certified a lab for that contaminant.

21                       Mr. McCambridge: So you would leave  
22           the individual water supply free to select a  
23           laboratory without prior agency approval if where  
24           like that radon or radium or something, if that

1           laboratory is certified for it and Illinois E.P.A.  
2           has not certified a laboratory for that  
3           contaminant and U.S. E.P.A. has not certified a  
4           laboratory for that contaminant?

5                     Ms. Olson: That is close except for  
6           the U.S. E.P.A. part.

7                     Mr. McCambridge: So they would all  
8           pass the U.S. E.P.A. muster?

9                     Ms. Olson: So the agency is proposing  
10          that outside of U.S. E.P.A. approval, because  
11          U.S. E. P. A. will probably certify labs for all  
12          contaminants, we're making that assumption. Our  
13          intent is to broaden this rule to include  
14          laboratories certified by other primacy states  
15          only when Illinois E.P.A. has not certified for  
16          that contaminant. So, for example, there may be a  
17          lab, U.S. E.P.A. may have certified a lab for  
18          radiological parameter. Illinois E.P.A. or the  
19          state of Illinois through its other agencies has  
20          not certified any labs in state or out of state  
21          for radiological parameters. Therefore, we would  
22          accept under our proposal a laboratory that has  
23          been certified by say Missouri, or Wisconsin or  
24          any other primacy state.

1                   Mr. McCambridge: The question,  
2                   though, I guess is does the agency wish to make  
3                   that approval before the supplier runs a set of  
4                   analysis or does the agency wish to just run the  
5                   risk of disallowing analytic results after the  
6                   fact because they were not done at a laboratory  
7                   that meets that criteria?

8                   Ms. Olson: The laboratories that we  
9                   are proposing to include would be certified by a  
10                  state that has primacy enforcement responsibility.  
11                  As a part of having primacy enforcement  
12                  responsibility that laboratory must meet the  
13                  accreditation standards of that primacy state.  
14                  U.S. E.P.A. has reviewed and approved the  
15                  certification programs in those primacy states.  
16                  If it did not approve the certification programs  
17                  that state would not have primacy.

18                  Mr. McCambridge: What I'm trying to  
19                  avoid is the possible error that a supplier could  
20                  go to a laboratory that is certified for the  
21                  contaminant, have the analysis performed, but it  
22                  was inappropriate because there was an Illinois  
23                  laboratory or a laboratory approved outside of  
24                  Illinois by the agency. That's what I'm trying to

1 nail down here.

2 Mr. Crumly: That's fine. I think we  
3 see it can happen both ways.

4 Mr. McCambridge: But I sense a  
5 reluctance on the part of the agency to be  
6 reviewing or granting approvals riding by --

7 Mr. Crumly: Because we would be  
8 accepting that state's primacy certification where  
9 we might not have thoroughly reviewed it, even  
10 though it was approved.

11 Mr. McCambridge: I'm trying to avoid  
12 future trouble through uncertainty. So the  
13 agency's state of preference is to just have that  
14 third class defined and to have no prior approval  
15 process or anything on the part of the agency?

16 Mr. Crumly: I would think so.

17 Ms. Glosser: Then that leads me to a  
18 question. I didn't have any questions, but how  
19 would a water supply facility know who they should  
20 send something to? I mean, I'm not familiar with  
21 their business. So do they automatically have  
22 lists so that they know who to send stuff too?

23 Ms. Olson: Can we swear in our  
24 witnesses?

1                   (At this point the court reporter  
2                   swore in the witnesses, after which the following  
3                   proceedings were conducted:)

4                   Mr. Crumly: Normally how we handle,  
5                   would handle a situation like that, they would  
6                   call us and they would say, you know, they have to  
7                   do some tests and we would say "Here is the  
8                   guidelines you must follow: you must find", there  
9                   is no lab, to my knowledge, in Illinois certified.  
10                  So in order to find a lab you need to call a  
11                  neighboring state or any state, but you have to  
12                  insure that they are certified by a primacy state,  
13                  and we would leave it up to them to go forward and  
14                  find, unless we would know some offhand.

15                  Ms. Glosser: On the list, the labs  
16                  certified by E.P.A. in Illinois or out of  
17                  Illinois, are they posted on a website so they  
18                  know who those are?

19                  Mr. Siders: Right, on the Illinois  
20                  E.P.A., Environmental Laboratory Accreditation  
21                  website, we have a list of our accredited  
22                  laboratories, and we update that quite often.  
23                  So what labs are accredited in Illinois is readily  
24                  available.

1                   And for public water supplies, if they  
2                   need to go to a lab outside of Illinois that's  
3                   certified in radiochemistry they will say that  
4                   information is public available, on either that's  
5                   state website or on the TNI's national website.  
6                   So it's pretty easy to find that information.

7                   Ms. Glosser: So it's not just a black  
8                   box that they have to figure this out on their  
9                   own? So it seems like they would have sources of  
10                  information.

11                  Mr. Siders: Right. All public water  
12                  supplies know all the testing has to be done at a  
13                  certified lab, and then when you contact the  
14                  laboratory they can say "Tell me what your  
15                  certifications are. Show me your certificate from  
16                  Ohio, Minnesota or Florida". And it tells exactly  
17                  what method and contaminants they are accredited  
18                  for, and the length of that certification.

19                  Ms. Olson: Scott, do you know whether  
20                  or not our website posts agencies or laboratories  
21                  certified by Illinois Department of Public Health?

22                  Mr. Siders: Yes, and that would just  
23                  be from microbiology.

24                  Ms. Olson: So any laboratory

1 certified by the state of Illinois would be listed  
2 on our website?

3 Mr. Siders: Yes.

4 Ms. Olson: And I have a few follow-up  
5 questions for Mike if that's okay.

6 Mike, I'm going to ask you a  
7 hypothetical here. So if a community water supply  
8 was under the belief there were no laboratories  
9 certified in Illinois for a particular  
10 contaminant, and it went out of state what would,  
11 to another laboratory certified by another primacy  
12 state, what would the Division of Public Water  
13 Supplies do with the lab results?

14 Mr. Crumly: If there was a laboratory  
15 certified in Illinois?

16 Ms. Olson: Yes.

17 A. I would say we would ask for a resample  
18 for a lab that's certified in Illinois, since  
19 that's part of our rule that they have to go to a  
20 lab that's certified.

21 Ms. Olson: And is there a time  
22 restriction on a sample, when the sample is taken  
23 or when they have to report, or would it be  
24 possible to go back and get another sample and

1 send it to another lab?

2 A. It's possible, a lot of times with  
3 radionuclides, though, it's not possible. Plus  
4 systems, it depends what monitoring frequency  
5 their on, if they are on like a quarterly you have  
6 a specific three month window. But if you're on  
7 tri-annual or annual you have a whole year or  
8 three years to collect that sample in. So that  
9 could, you know, it varies, that answer. It could  
10 be enough time, and maybe there's not.

11 Mr. McCambridge: If I may ask: since  
12 the primary focus right now is on radionuclides  
13 what is sample turn-around?

14 Mr. Crumly: I believe for  
15 radionuclides about 45 days.

16 Mr. McCambridge: About half of the  
17 sampling period.

18 Mr. Crumly: They can rush samples,  
19 if needed. But normally, like our sample demand  
20 letters when we send out, when supplies, time for  
21 them to monitor we specify in there that you need  
22 to go to a lab certified by Illinois. I don't  
23 envision us putting this other part in there  
24 unless it comes to a point where there is no lab

1 certified in Illinois, then we would include in  
2 our sample demand that since there is no  
3 laboratories in Illinois certified then you can go  
4 elsewhere, but that information would not be  
5 available to them unless there wasn't any labs in  
6 Illinois.

7 Ms. Olson: So every time they have to  
8 report their samples do we send a sample demand  
9 letter?

10 Mr. Crumly: Uh-huh.

11 Ms. Olson: And in that letter we tell  
12 them what laboratory they need to use?

13 A. What type of laboratory, yes.

14 Mr. McCambridge: I don't know if this  
15 came out earlier, but are there suppliers that are  
16 out of compliance presently because they have not  
17 been able to obtain the radiologic?

18 Mr. Crumly: We have, the majority of  
19 suppliers use outside Illinois labs that have been  
20 certified by U.S. E.P.A. We do, I believe, 11  
21 water systems that currently are still using the  
22 laboratory in northern Illinois who lost, whose  
23 certification had expired in November or December  
24 of last year, December of 2012, that are still

1 using that laboratory to send their samples to.  
2 We have yet to say anything to them pending what  
3 the outcome of this is.

4 Mr. McCambridge: But it is not likely  
5 that U.S. E.P.A. is going to hammer us on that  
6 issue?

7 Mr. Crumly: They are aware of it, and  
8 we told them what we are currently doing and they  
9 seem to be satisfied with that response.

10 Ms. Olson: Mike, do you know whether  
11 or not radionuclides are sampled quarterly or  
12 yearly or every few years?

13 Mr. Crumly: It's all dependent on  
14 your initial results with the levels found in the  
15 sample result determines frequency. For example,  
16 if I sample and I have less than half the MCL for  
17 radium I can go to an every nine year frequency,  
18 because the levels don't fluctuate too much in  
19 those aquifers where the radium is found.

20 Ms. Olson: So there are some community  
21 water supplies who are sampling for radionuclides  
22 once every nine (9) years?

23 Mr. Crumly: Uh-huh, yes.

24 Mr. McCambridge: Do you have anything

1           else, Ms. Olson?

2                       Ms. Olson: No. We are happy to  
3 answer any further questions. Chairman Glosser?

4                       Ms. Glosser: I have no further  
5 questions.

6                       Mr. McCambridge: Okay, I do have a  
7 couple of things. The first one is not directly  
8 related, but sort of. Remember that we brought up  
9 the drinking water update R14-8 where I tried to  
10 write that as broadly as possible. That is now  
11 out of proposal. I assume that the agency will  
12 make comments in the R14-8 proceeding on that.

13                      Would the agency have anything to say  
14 that would aid in this R14-8 proceeding on that  
15 point?

16                      Ms. Olson: I have not had a chance to  
17 look. I'm assuming the order was entered last  
18 Thursday for that rule making?

19                      Mr. McCambridge: I believe so, yes,  
20 and it should be out.

21                      Ms. Olson: I have not looked at what  
22 was posted, but is it what --

23                      Mr. McCambridge: It was on the sister  
24 state issue, this blanket approval of a laboratory

1 for a sister state, and I can't remember what the  
2 contaminant was off the top of my head. But there  
3 was one buried in there that seemed to fly in the  
4 face of what the agency presented at the hearing  
5 last week.

6 Ms. Olson: You know, for the purposes  
7 of this hearing, and we will make a comment in the  
8 R14-8 proceeding, but if you will look at Exhibit  
9 1, which was submitted at the last hearing the  
10 agency suggested similar language as to what was  
11 listed in the other sections you identified, which  
12 would be a certified laboratory listed in Section  
13 611.490.

14 Your previous questions suggest that  
15 we may have different language such as a certified  
16 laboratory described or in a class contained in  
17 that section, that would be the agency's  
18 preference at this time.

19 Mr. McCambridge: And to aid us in  
20 allocating our resources, because we get busy.  
21 How rapidly does the agency desire to see this go  
22 out for first notice proposal?

23 Ms. Olson: The agency would like to  
24 see this rule done as quickly as possible for the

1 primary reason that we have 11 community water  
2 supplies that are using a lab that does not have  
3 Illinois certification. And so to square our  
4 program, this proposed change is absolutely  
5 necessary. For those reasons we understand that  
6 the board is extremely busy, but we would greatly  
7 appreciate it if the board could move to first  
8 notice quickly.

9 Mr. McCambridge: Heard.

10 Does anyone in the room have anything  
11 else?

12 Seeing none we adjourn the hearing.

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## 1 CERTIFIED SHORTHAND REPORTER'S CERTIFICATION

2  
3 I, GARY J. MANINFIOR, Certified Shorthand  
4 Reporter and Notary Public of the State of  
5 Illinois, do hereby certify that on the 13th day  
6 of November, A.D., 2013 I did take stenographic  
7 notes of the questions propounded and answers  
8 thereto, and that said notes were reduced to  
9 typewritten form under my direction and  
10 supervision.

11 I do further certify that the attached  
12 and foregoing is a true, correct, and complete  
13 copy of my notes and that said testimony is now  
14 herewith returned.

15 I do further certify that the said  
16 hearing was taken at the Illinois Pollution  
17 Control Board, 1021 North Grand Avenue East,  
18 Springfield, Illinois.

19 I do further certify that I am not  
20 related in any way to any of the parties involved  
21 in this action and have no interest in the outcome  
22 thereof.

23 Dated at Mattoon, Illinois, this 19th  
24 day of November, A.D., 2013, and given under my  
hand and seal.

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Gary J. Maninfior, Reporter

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