

ILLINOIS POLLUTION CONTROL BOARD
July 16, 2015

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
AMENDMENTS TO PRIMARY DRINKING) R15-23
WATER STANDARDS) (Rulemaking - Water)
35 ILL. ADM. CODE 611)

HEARING OFFICER ORDER

On May 20, 2015, the Illinois Environmental Protection Agency (IEPA) filed a new rulemaking to amend the fluoridation requirement in the Board's public water supply regulations. IEPA explains that the Board's rules at Section 611.125 require all community water supplies to maintain a fluoride ion concentration of 0.9 to 1.2 milligrams per liter (mg/L) in the community water supply distribution system. SR. at 1; 35 Ill. Adm. Code 611.125. IEPA continues that the state requirement is based on a statutory fluoridation requirement found in the Public Water Supply Regulation Act, 415 ILCS 40 (2014). SR. at 1. A statutory change in 2011 removed the fluoridation range from the statute and replaced it with a reference to the optimal fluoridation levels recommended by the United States Department of Health and Human Services (HHS). On May 1, 2015, HHS adopted a recommended fluoridation ion concentration of 0.7 mg/L. SR. at 1, 4. IEPA proposes to change the Board's rules to adopt the current HHS recommendation, which will result in a reduction of community water supply's cost of having to meet the existing higher fluoridation levels. IEPA recommends the Board amend the rules to reflect a fluoridation ion concentration of 0.7 mg/L. SR. at 1. In addition, IEPA is proposing that the Board reinstate a secondary fluoride standard in Section 611.858 that IEPA opines to have been inadvertently repealed in 2001. SR. at 1, citing SDWA Update, USEPA Amendments (January 1, 2000, through June 30, 2000), R01-07 (Jan. 4, 2001).

On June 9, 2015, hearing dates were set for July 30, 2015 and August 19, 2015. For the July 30, 2015 hearing prefiled testimony was due by July 2, 2015, and prefiled questions are due July 16, 2015. The Board and staff have reviewed the prefiled testimony and posed questions attached as Attachment A to this order.

All filings in this proceeding will be available on the Board's web page at www.ipcb.state.il.us and participants may file electronically on the Board's web page.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Marie E. Tipsord". The signature is written in a cursive style with a large, prominent 'M' and 'E'.

Marie E. Tipsord
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ATTACHMENT A

R 15-23

AMENDMENTS TO PRIMARY DRINKING WATER STANDARDS
35 ILL. ADM. CODE 611

Questions for Hearing July 30, 2015

1. IEPA proposes to add Section 611.858 consisting of a secondary standard for fluoride. IEPA notes Section 611.858 was repealed in a prior rulemaking. SR at 4-5. IEPA further notes that Sections 611.901, 611.904, and 611.908 include references to the repealed Section 611.858. SR at 5. Secondary standards relate to aesthetic qualities of water and are not federally enforceable standards. 40 CFR 143.1. Board regulations do not include these secondary standards. However, enforceable primary standards require public notice when there is an exceedance of the secondary standard for fluoride. 40 CFR 141.208. Rather than adding Section 611.858 as proposed by IEPA, comment on instead removing the references to Section 611.858 in the public notice provisions found in Sections 611.901, 611.904, and 611.908. For example, Section 611.901(a)(3)(C) would be amended as follows and similar revisions made to Sections 611.904 and 611.908:

~~An~~ The notice required by Section 611.208 for an exceedance of 2 mg/ℓ fluoride (the federal secondary MCL for fluoride standard of Section 611.858 (see 40 CFR 143.3)).

2. Comment on making the above revisions through a future rulemaking under the Board's identical in substance rulemaking authority set forth in Section 17.5 of the Environmental Protection Act.
3. In IEPA's response to Board Question (e) in the June 4, 2015 Opinion and Order, IEPA stated, "Given that the fluoride requirement itself is not a health-based standard, no impacts as described would result." PC 5 at 3. In the Statement of Reasons, IEPA explained that the proposed revision to the Board's fluoride standard is based on the statutory requirement at 415 ILCS 40 for the Illinois Department of Public Health (IDPH) to promulgate rules requiring the addition of fluoride based on recommendations of the U.S. Department of Health and Human Services (HHS). SR at 1. Would you please clarify why the fluoride requirement in the Board's rules is not a health-based standard and if it is solely a requirement based on the statutory requirement for IDPH.