

ILLINOIS POLLUTION CONTROL BOARD
November 5, 2015

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

Adopted Rule. Final Notice.

OPINION AND ORDER OF THE BOARD (by D. Glosser):

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. The proposal amends Section 611.125 to change the requirement that all community water supplies maintain a fluoride ion concentration of 0.9 to 1.2 milligrams per liter (mg/L) in the community water supply distribution system to a fluoridation ion concentration of 0.7 mg/L.

On September 17, 2015, the Board considered comments and testimony and found that proceeding to second notice was appropriate. The Joint Committee on Administrative Rules (JCAR) issued a certificate of no objection on the rule. Therefore, today the Board proposes final adoption of the rule. In this opinion, the Board finds the rule is technically feasible and economically reasonable and is protective of human health and the environment. Therefore, the Board adopts the rule for final notice making only nonsubstantive changes.

The Board will briefly describe the procedural background and then summarize the rule. The Board will then summarize the relevant portions of the testimony and comments. Finally, the Board will discuss the reasons for proceeding to adoption.

PROCEDURAL BACKGROUND

Along with the rule language filed on May 20, 2015, IEPA included a statement of reasons (SR) and a motion for expedited review. IEPA also filed a motion asking the Board to adopt the proposal as an emergency rule while proceeding with expedited review. On June 4, 2015, the Board accepted the proposal without commenting on the merits of the proposal and directed the Clerk to provide first notice of the proposal. Also on June 4, 2015, the Board reserved ruling on the motion to adopt an emergency rule, requesting that IEPA provide additional information and invited public comment on the matter.

The Board received the following five comments regarding the request for the emergency rule. The Board will not summarize those comments in this opinion as those comments were summarized and discussed in the July 9, 2015 order. The Board notes that the comments were from:

Kyla Jacobsen, Utilities Director, City of Elgin Water Department (PC 1)

Molly Nocerino (PC 2)

William J. Soucie, M.S., Operations Director, Central Lake County Joint Action Water Agency (PC 3)

Randolph Pankiewicz, Manager Water Quality and Environmental Compliance, Illinois American Water (PC 4)

IEPA (PC 5).

On July 9, 2015, after considering the comments, the Board found that that an immediate effective date of the amended fluoride requirement is not necessary to address an emergency. Therefore, the Board denied the motion for emergency rulemaking.

Pursuant to Section 27(b) of the Environmental Protection Act (Act) (415 ILCS 5/27(B) (2014)), the Board is required to request the Department of Commerce and Economic Opportunity (DCEO) to conduct an economic impact study on certain proposed rules prior to adoption of those rules. If DCEO chooses to conduct the economic impact study, DCEO has 30 to 45 days after such request to produce a study of the economic impact of the proposed rules. The Board must then make the economic impact study, or DCEO's explanation for not conducting the study, available to the public at least 20 days before a public hearing on the economic impact of the proposed rules. On June 4, 2015, the Board requested that DCEO conduct an economic impact study for the above-referenced rulemakings. Any response from DCEO was due by July 16, 2015. The Board received no response from DCEO.

The Board held a hearing on July 30, 2015 in Springfield and a hearing on August 19, 2015 in Chicago. Mr. David McMillan testified on behalf of IEPA. Also, at the August 19, 2015 hearing, the hearing officer asked if anyone wished to comment on DCEO's decision not to perform an economic impact statement. No one commented. 8/19/15 Tr. at 3-5.

The final comment period was closed on September 9, 2015, and the Board received two additional comments, one from IEPA (PC 7) further supporting its proposal, and one from Molly Nocerino (PC 6) offering citation to new articles on fluoridation of drinking water.

On September 17, 2015, the Board adopted a second notice opinion and order. On October 13, 2015, JCAR issued a certificate of no objection to the rule.

IEPA'S PROPOSAL

IEPA explained 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 mg/L in the community water supply distribution system. SR. at 1; 35 Ill. Adm. Code 611.125. IEPA continued 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 proposed to change the Board's rules to adopt the current HHS recommendation, which will result in a reduction of a community water supply's cost to meet the existing higher

fluoridation levels. IEPA recommended the Board amend the rules to reflect a fluoridation ion concentration of 0.7 mg/L. SR. at 1. In addition, IEPA proposed 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).

TESTIMONY AND COMMENTS

Below the Board summarizes the testimony and public comments received regarding the proposed rule. As noted above, the Board will not summarize the comments that were filed relating to whether or not the Board should propose an emergency rule (PC 1 through PC 5).

IEPA Testimony and Public Comments

Mr. David McMillan presented testimony on behalf of IEPA. Exh. 1. Mr. McMillan is the Illinois Drinking Water Administrator for IEPA and has held the position since December 2010, and he leads a collaborative program over four sections to ensure the safety of Illinois' drinking water supplies. Exh. 1 at 1. Mr. McMillan graduated from Bradley University with a Bachelor of Science in Geology in 1985. *Id.*

Mr. McMillan testified that on May 1, 2015, HHS issued a recommendation that community water supplies add fluoride to their water to maintain the fluoride ion concentration of 0.7 mg/L. Exh. 1 at 2. Mr. McMillan noted that IDPH is required by statute to incorporate HHS standards in IDPH rules. *Id.* IEPA believes that the Board should modify its rules. *Id.*

Mr. McMillan testified that IEPA projects that water systems that add fluoride could see a reduction of 20% to 30% in the cost of chemical addition for fluoride. Exh. 1 at 2. Mr. McMillan explained that IEPA projects that a total statewide population using water with fluoride addition is 11,825,891 according to information gleaned from the Safe Drinking Water Information System. *Id.* Further, based upon information received from the City of Chicago and considering their population served is 5,409,202, Chicago estimates a savings of \$1,000,000 per year. *Id.* Mr. McMillan stated that based upon information received from Illinois American Water Company and considering their population served is 932,688, Illinois American Water Company estimate a savings of \$150,000 per year. Using these two estimates, Mr. McMillan extrapolated that the cost savings statewide can be conservatively projected to be around \$2,000,000 per year. *Id.* Mr. McMillan opined that during these times of limited resources, the savings could be used to further protect water supplies in Illinois. Exh. 1 at 3.

Mr. McMillan also responded to questions posed by the Board. The Board asked about IEPA's proposal to reinstate Section 611.858, which IEPA notes is cross-referenced in Section 611.901, 611.904 and 611.908 (35 Ill. Adm. Code 611.901, 611.904 and 611.908). PC 7 at 1. The Board noted in its question that:

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. Hearing Officer Order July 16, 2015.

The Board asked Mr. McMillan to comment on whether, instead of reinstating Section 611.858, it would be appropriate to delete the cross references either in this rulemaking or in an identical in substance rulemaking. *Id.* Mr. McMillan indicated that deletion of the cross references would be acceptable, either in this rulemaking or in an identical and substance rulemaking. PC 7 at 2; 8/19/15 Tr. at 6.

Mr. McMillan also responded to a question seeking clarification of statements in IEPA's public comment regarding the emergency rule. Hearing Officer Order July 16, 2015. The Board asked IEPA to explain why the fluoride requirement in the Board's rules is not a health-based standard. *Id.* Mr. McMillan explained that because IEPA must permit installation and operation of community water supplies, including plants that add fluoride, the Board should have a fluoride standard in the rules. PC 7 at 2; 7/30/15Tr. at 9. Mr. McMillan stated: "[t]he standard is not health based, but rather its basis is in the interest of safety of chemical addition as any consideration of health was already made by the legislature when the statute was created [415 ILCS 40/7a]." *Id.* Mr. McMillan further explained that IEPA has a responsibility to ensure that the chemicals added to public water supplies are added in a "safe, consistent manner" before issuing permits.

Mr. McMillan indicated that the standard in the Board's regulation is not based solely on the statutory requirement for IDPH; but rather "[t]his rule reinforces the existing law requiring fluoridation of public water supplies." *Id.* at 3 quoting R 73-13. 7/30/15Tr. at 11. Mr. McMillan explained that the proposed rule will ensure that IEPA will cooperate with IDPH to ensure the proper operation of equipment at a public water supply facility. 7/30/15Tr. at 9.

Molly Nocerino (PC 6)

Ms. Nocerino shared a summary of a *Newsweek* article on a review of the effectiveness of fluoridation by the Cochrane Collaboration. PC 6 at 1. The article was by Douglas Main and was entitled Fluoridation May Not Prevent Cavities, Scientific Review Shows. *Id.*

SECOND NOTICE

At second notice the Board noted its rules already require a fluoride ion concentration for public water supplies that add fluoride based on the statutory provisions in Section 7a of the Public Water Supply Regulation Act (415 ILCS 40/7a (2014)). Therefore, the Board found that a rule, lowering that level is technically feasible. Further, the Board found that lowering the fluoridation requirement will allow public water supplies that add fluoride to reduce costs. Reductions of 20% to 30% in the cost of chemical addition for fluoride can be achieved, and IEPA projects that a total statewide population using water with fluoride addition is 11,825,891 according to information gleaned from the Safe Drinking Water Information System. Based upon information received from the City of Chicago, Chicago estimates a savings of \$1,000,000 per year. The Board therefore found that the rule is economically reasonable.

At first notice the Board proposed restoring Section 611.858; however, the Board specifically asked the IEPA about an alternative to such restoration. The Board sought comment on whether elimination of the cross-references to Section 611.858 would be acceptable. IEPA indicated that the elimination of the cross reference to Section 611.858 in Sections 611.901, 611.904, and 611.908 was an acceptable change. IEPA also indicated that the change could be made either in this rulemaking or in an identical-in-substance rulemaking. After reviewing the issue the Board made the change in an identical-in-substance rule. The Board noted:

The Board will do so in this IIS update, rather than in docket R15-23, as requested by the Agency. The Board would prefer to correct errors in IIS rules in an IIS proceeding where doing so does not result in delay of the correction. As is explained below, no such delay will occur in this proceeding. SDWA Update, USEPA Amendments (January 1, 2015 through June 30, 2015), R16-4 slip op. at 5 (Aug. 20, 2015).

Therefore, the Board did not proceed to second notice with the language reinstating Section 611.858.

DISCUSSION

The Board adopts rules under Title VII of the Act (415 ILCS 5/26-29 (2014)). The Board's authority is primarily derived from Section 27 of the Act (415 ILCS 5/27 (2014)), which allows the Board to adopt substantive regulations that can include "different provisions as required by circumstances for different contaminant sources and for different geographical areas." 415 ILCS 5/27(a) (2014).

Section 27(a) of the Act also provides that,

In promulgating regulations under this Act, the Board shall take into account the existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, the nature of the existing air quality, or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution. 415 ILCS 5/27(a) (2014).

Thus, the Board considers whether the rule is economically reasonable and technically feasible in reducing the particular type of pollution. The Board's review in rulemakings is the same whether the rule is specific to one region or discharger or is generally applicable State wide. Therefore, the Board must determine that the proposed rule is technically feasible and economically reasonable.

At second notice the Board found the rule economically reasonable and technically feasible. JCAR raised no issues and suggested no changes to the rule. Based on the record before the Board the Board finds that rule is supported by the record. Therefore, the Board adopts the rule for final notice.

CONCLUSION

The Board finds that the rule is supported by the record and that the rule is economically reasonable and technically feasible. Therefore, the Board proceeds to adoption of the rule. The Board does not include the language reinstating Section 611.858 as that provision is not supported.

ORDER

The Board directs the Clerk to provide the following rule to the Secretary of State for publication in the *Illinois Register* as an adopted rule:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE F: PUBLIC WATER SUPPLIES
CHAPTER I: POLLUTION CONTROL BOARD

PART 611
PRIMARY DRINKING WATER STANDARDS

SUBPART A: GENERAL

Section	
611.100	Purpose, Scope, and Applicability
611.101	Definitions
611.102	Incorporations by Reference
611.103	Severability
611.105	Electronic Reporting
611.107	Agency Inspection of PWS Facilities
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611.110	Special Exception Permits
611.111	Relief Equivalent to SDWA Section 1415(a) Variances
611.112	Relief Equivalent to SDWA Section 1416 Exemptions
611.113	Alternative Treatment Techniques
611.114	Siting Requirements
611.115	Source Water Quantity
611.120	Effective Dates
611.121	Maximum Contaminant Levels and Finished Water Quality
611.125	Fluoridation Requirement
611.126	Prohibition on Use of Lead
611.130	Special Requirements for Certain Variances and Adjusted Standards
611.131	Relief Equivalent to SDWA Section 1415(e) Small System Variance
611.160	Composite Correction Program
611.161	Case-by-Case Reduced Subpart Y Monitoring for Wholesale and Consecutive Systems

SUBPART B: FILTRATION AND DISINFECTION

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611.201	Requiring a Demonstration
611.202	Procedures for Agency Determinations
611.211	Filtration Required
611.212	Groundwater under Direct Influence of Surface Water
611.213	No Method of HPC Analysis
611.220	General Requirements
611.230	Filtration Effective Dates
611.231	Source Water Quality Conditions
611.232	Site-Specific Conditions
611.233	Treatment Technique Violations
611.240	Disinfection
611.241	Unfiltered PWSs
611.242	Filtered PWSs
611.250	Filtration
611.261	Unfiltered PWSs: Reporting and Recordkeeping
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611.271	Protection during Repair Work
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611.276	Recycle Provisions

SUBPART C: USE OF NON-CENTRALIZED TREATMENT DEVICES

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611.280	Point-of-Entry Devices
611.290	Use of Point-of-Use Devices or Bottled Water

SUBPART D: TREATMENT TECHNIQUES

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611.295	General Requirements
611.296	Acrylamide and Epichlorohydrin
611.297	Corrosion Control

SUBPART F: MAXIMUM CONTAMINANT LEVELS (MCLs) AND MAXIMUM RESIDUAL DISINFECTANT LEVELS (MRDLs)

Section	
611.300	Old MCLs for Inorganic Chemical Contaminants
611.301	Revised MCLs for Inorganic Chemical Contaminants
611.310	State-Only Maximum Contaminant Levels (MCLs) for Organic Chemical Contaminants
611.311	Revised MCLs for Organic Chemical Contaminants
611.312	Maximum Contaminant Levels (MCLs) for Disinfection Byproducts (DBPs)
611.313	Maximum Residual Disinfectant Levels (MRDLs)

611.320	Turbidity (Repealed)
611.325	Microbiological Contaminants
611.330	Maximum Contaminant Levels for Radionuclides
611.331	Beta Particle and Photon Radioactivity (Repealed)

SUBPART G: LEAD AND COPPER

Section	
611.350	General Requirements
611.351	Applicability of Corrosion Control
611.352	Corrosion Control Treatment
611.353	Source Water Treatment
611.354	Lead Service Line Replacement
611.355	Public Education and Supplemental Monitoring
611.356	Tap Water Monitoring for Lead and Copper
611.357	Monitoring for Water Quality Parameters
611.358	Monitoring for Lead and Copper in Source Water
611.359	Analytical Methods
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SUBPART I: DISINFECTANT RESIDUALS, DISINFECTION BYPRODUCTS, AND DISINFECTION BYPRODUCT PRECURSORS

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611.382	Monitoring Requirements
611.383	Compliance Requirements
611.384	Reporting and Recordkeeping Requirements
611.385	Treatment Technique for Control of Disinfection Byproduct (DBP) Precursors

SUBPART K: GENERAL MONITORING AND ANALYTICAL REQUIREMENTS

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611.480	Alternative Analytical Techniques
611.490	Certified Laboratories
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SUBPART L: MICROBIOLOGICAL MONITORING AND ANALYTICAL REQUIREMENTS

Section	
611.521	Routine Coliform Monitoring

611.522	Repeat Coliform Monitoring
611.523	Invalidation of Total Coliform Samples
611.524	Sanitary Surveys
611.525	Fecal Coliform and E. Coli Testing
611.526	Analytical Methodology
611.527	Response to Violation
611.528	Transition from Subpart L to Subpart AA Requirements
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SUBPART M: TURBIDITY MONITORING AND ANALYTICAL REQUIREMENTS

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SUBPART N: INORGANIC MONITORING AND ANALYTICAL REQUIREMENTS

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611.606	Confirmation Samples
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611.608	Additional Optional Monitoring
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611.611	Inorganic Analysis
611.612	Monitoring Requirements for Old Inorganic MCLs
611.630	Special Monitoring for Sodium
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611.645	Analytical Methods for Organic Chemical Contaminants
611.646	Phase I, Phase II, and Phase V Volatile Organic Contaminants
611.647	Sampling for Phase I Volatile Organic Contaminants (Repealed)
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- 611.657 Analytical Methods for 36 Contaminants (Repealed)
- 611.658 Special Monitoring for Organic Chemicals (Repealed)

SUBPART P: THM MONITORING AND ANALYTICAL REQUIREMENTS (~~REPEALED~~)

Section

- 611.680 Sampling, Analytical, and other Requirements (Repealed)
- 611.683 Reduced Monitoring Frequency (Repealed)
- 611.684 Averaging (Repealed)
- 611.685 Analytical Methods (Repealed)
- 611.686 Modification to System (Repealed)
- 611.687 Sampling for THM Potential (Repealed)
- 611.688 Applicability Dates (Repealed)

SUBPART Q: RADIOLOGICAL MONITORING AND ANALYTICAL REQUIREMENTS

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- 611.720 Analytical Methods
- 611.731 Gross Alpha
- 611.732 Beta Particle and Photon Radioactivity
- 611.733 General Monitoring and Compliance Requirements

SUBPART R: ENHANCED FILTRATION AND DISINFECTION: SYSTEMS THAT
SERVE 10,000 OR MORE PEOPLE

Section

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- 611.741 Standards for Avoiding Filtration
- 611.742 Disinfection Profiling and Benchmarking
- 611.743 Filtration
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SUBPART S: GROUNDWATER RULE

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Section	
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611.833	Cross Connection Reporting
611.840	Reporting
611.851	Reporting MCL, MRDL, and other Violations (Repealed)
611.852	Reporting other Violations (Repealed)
611.853	Notice to New Billing Units (Repealed)
611.854	General Content of Public Notice (Repealed)
611.855	Mandatory Health Effects Language (Repealed)
611.856	Fluoride Notice (Repealed)
611.858	Fluoride Secondary Standard (Repealed)
611.860	Record Maintenance
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SUBPART X: ENHANCED FILTRATION AND DISINFECTION-SYSTEMS SERVING FEWER THAN 10,000 PEOPLE

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611.TABLE Z	Federal Effective Dates

AUTHORITY: Implementing Sections 7.2, 17, and 17.5 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 17, 17.5, and 27].

SOURCE: Adopted in R88-26 at 14 Ill. Reg. 16517, effective September 20, 1990; amended in R90-21 at 14 Ill. Reg. 20448, effective December 11, 1990; amended in R90-13 at 15 Ill. Reg. 1562, effective January 22, 1991; amended in R91-3 at 16 Ill. Reg. 19010, effective December 1, 1992; amended in R92-3 at 17 Ill. Reg. 7796, effective May 18, 1993; amended in R93-1 at 17 Ill. Reg. 12650, effective July 23, 1993; amended in R94-4 at 18 Ill. Reg. 12291, effective July 28, 1994; amended in R94-23 at 19 Ill. Reg. 8613, effective June 20, 1995; amended in R95-17 at 20 Ill. Reg. 14493, effective October 22, 1996; amended in R98-2 at 22 Ill. Reg. 5020, effective March 5, 1998; amended in R99-6 at 23 Ill. Reg. 2756, effective February 17, 1999; amended in R99-12 at 23 Ill. Reg. 10348, effective August 11, 1999; amended in R00-8 at 23 Ill. Reg. 14715, effective December 8, 1999; amended in R00-10 at 24 Ill. Reg. 14226, effective September 11, 2000; amended in R01-7 at 25 Ill. Reg. 1329, effective January 11, 2001; amended in R01-20 at 25 Ill. Reg. 13611, effective October 9, 2001; amended in R02-5 at 26 Ill. Reg. 3522, effective February 22, 2002; amended in R03-4 at 27 Ill. Reg. 1183, effective January 10, 2003; amended in R03-15 at 27 Ill. Reg. 16447, effective October 10, 2003; amended in R04-3 at 28 Ill. Reg.

5269, effective March 10, 2004; amended in R04-13 at 28 Ill. Reg. 12666, effective August 26, 2004; amended in R05-6 at 29 Ill. Reg. 2287, effective January 28, 2005; amended in R06-15 at 30 Ill. Reg. 17004, effective October 13, 2006; amended in R07-2/R07-11 at 31 Ill. Reg. 11757, effective July 27, 2007; amended in R08-7/R08-13 at 33 Ill. Reg. 633, effective December 30, 2008; amended in R10-1/R10-17/R11-6 at 34 Ill. Reg. 19848, effective December 7, 2010; amended in R12-4 at 36 Ill. Reg. 36 Ill. Reg. 7110, effective April 25, 2012; amended in R13-2 at 37 Ill. Reg. 1978, effective February 4, 2013; amended in R14-8 at 38 Ill. Reg. 3608, effective January 27, 2014; amended in R14-9 at 38 Ill. Reg. 9792, effective April 21, 2014; amended in R15-23 at 39 Ill. Reg. _____, effective _____).

SUBPART A: GENERAL

Section 611.125 Fluoridation Requirement

All CWSs that are required to add fluoride to the water must maintain a fluoride ion concentration, reported as F, of 0.7 ~~0.9 to 1.2~~ mg/ℓL in its distribution system, ~~as required by Section 7a of the Public Water Supply Regulation Act [415 ILCS 40/7a].~~

BOARD NOTE: This is an additional State requirement.

(Source: Amended at 39 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2012); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 5, 2015, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board