

ILLINOIS POLLUTION CONTROL BOARD
November 3, 2022

IN THE MATTER OF:)
)
SDWA UPDATE, USEPA AMENDMENTS) R 21-10
(July 1, 2020, through December 31, 2020)) (Identical-in-Substance Rulemaking -
) Water)
SDWA UPDATE, USEPA AMENDMENTS) R22-2
(January 1, 2021, through June 30, 2021)) (Identical-in-Substance Rulemaking –
) Water)

ORDER OF THE BOARD (by C.M. Santos and J. Van Wie):

In rulemaking docket R21-10, the Board will amend the Illinois primary drinking water regulations that are identical-in-substance (IIS) to amendments adopted by the United States Environmental Protection Agency (USEPA) during the second half of 2020. In rulemaking docket R22-2, the Board will amend the Illinois primary drinking water regulations that are identical-in-substance (IIS) to amendments adopted by the United States Environmental Protection Agency (USEPA) during the first half of 2021.

On August 26, 2021, the Board consolidated these two dockets with one another for concurrent consideration. In the same order, the Board found that it needed additional time to complete action on USEPA amendments, provided reasons for delay, and extended the adoption deadline to March 1, 2022. The Board today finds that it needs additional time to complete action on the USEPA amendments and extends the due date for final Board action until April 1, 2023.

STATUTORY BACKGROUND

Sections 7.2 and 17.5 of the Environmental Protection Act (Act) (415 ILCS 5/7.2, 17.5 (2020)) require the Board to adopt primary drinking water regulations that are IIS to regulations that USEPA adopts to implement Sections 1412(b), 1414(c), 1417(a), and 1445(a) of the federal Safe Drinking Water Act (SDWA) (42 U.S.C. §§ 300g-1(a), 300g-3(c), 300g-6(a), and 300j-4(a) (2019)). Section 17.5 of the Act requires the Board to use the IIS rulemaking procedure of Section 7.2 of the Act. Section 17.5 provides that Title VII of the Act and Section 5-35 of the Illinois Administrative Procedure Act (APA) (5 ILCS 100/5-35 (2020)) relating to rulemaking procedures do not apply to the Board’s adoption of these identical-in-substance regulations.

Section 7.2(b) of the Act requires that “the Board shall complete its rulemaking proceedings within one year after the adoption of the corresponding federal rules.” 415 ILCS 5/7.2(b) (2020). Section 7.2(b) also provides that the one-year adoption deadline “may be extended by the Board for an additional period of time if necessary to complete the rulemaking proceeding.” *Id.* To extend the deadline, the Board must find that the one-year period is not sufficient to complete the rulemaking and state specific reasons for the extension. *Id.* The Board must publish a notice of extension in the *Illinois Register*. *Id.*

SUMMARY OF USEPA ACTION THAT MAY REQUIRE BOARD ACTION

The Board reserved rulemaking docket R 21-10 to address USEPA action during the second half of calendar year 2020 relating to drinking water and within the Board's IIS authority. In its August 26, 2021 order, the Board summarized this single USEPA action:

September 1, 2020 (85 Fed. Reg. 54235):
USEPA revised its rules requiring use of lead-free pipes, fittings, fixtures, and flux for plumbing providing drinking water.

The statutory due date for completing Board action on these USEPA amendments was September 1, 2021. Meeting that deadline would have required the Board to propose amendments no later than June 3, 2021.

The Board reserved rulemaking docket R 22-2 to address these actions during the first half of calendar year 2021. In its August 26, 2021 order, the Board summarized these six USEPA actions:

January 15, 2021 (86 Fed. Reg. 4198):
USEPA revised its Lead and Copper Rule regulating the lead and copper content of drinking water.

March 12, 2021 (86 Fed. Reg. 14003):
USEPA delayed the effective date for the January 15, 2021 Lead and Copper Rule revisions.

May 19, 2021 (86 Fed. Reg. 27226):
USEPA updated the Clean Water Act analytical methods, which are incorporated by reference in the Illinois drinking water rules.

May 26, 2021 (86 Fed. Reg. 28277):
USEPA designated 17 new alternative equivalent methods for drinking water analyses.

June 2, 2021 (86 Fed. Reg. 29526):
USEPA corrected the May 26, 2021 alternative equivalent methods designations.

June 16, 2021 (86 Fed. Reg. 31939):
USEPA delayed the effective and compliance dates for the January 15, 2021 Lead and Copper Rule revisions.

Based on the earliest USEPA action during this period, the statutory due date to complete Board action in this docket was January 15, 2022. Meeting that deadline would have required the Board to proposed amendments no later than October 21, 2021.

EXTENSION OF DUE DATE AND REASONS FOR DELAY

The Board finds that additional time is needed to complete amendments based on the USEPA actions summarized above. The Board extends the due date for final action until April 1, 2023.

While addressing these USEPA actions, the Board is also reviewing the entire text of the Illinois primary drinking water regulations. This review will allow the Board to clarify and simplify the rules, make corrections where necessary, and also propose changes based on suggestions regularly made by the Joint Committee on Administrative Rules. Also, the Board staff member who has worked on IIS for more than 30 years plans to retire within the next several months. The Board wishes to take advantage of his experience by reviewing rules in addition to these drinking water regulations before he retires.

The Board consider reviewing and proposing revisions to its rules important and productive. However, the process is complex and time-consuming. The large volume of text and effort needed to review the Board's rules has required more time than first expected. The Board believes that delay is justified by this experienced and comprehensive review of IIS rules.

The Board plans to complete the amendments in this consolidated docket on the following schedule to meet the extended deadline:

Proposal adopted date:	Thursday, January 5, 2023
Publication submission deadline:	Monday, January 9, 2023
Expected <i>Illinois Register</i> publication:	Friday, January 20, 2023
End of 45-day public comment period:	Monday, March 6, 2023
Adoption date:	Thursday, March 16, 2023
Expected filing and effective date:	Monday, March 27, 2023
Expected <i>Illinois Register</i> publication:	Friday, April 7, 2023

ORDER

The Board directs the Clerk to submit notice of this order to the Secretary of State for required publication in the *Illinois Register*.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 3, 2022, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board