

From: [Tipsord, Marie](#)
To: [Brown, Don](#)
Subject: FW: Identical in substance scenario
Date: Tuesday, May 30, 2023 8:31:27 AM
Importance: High

Could you add this to the R21-10 docket as public comment

From: Terranova, Sara <Sara.Terranova@Illinois.gov>
Sent: Tuesday, May 23, 2023 4:46 PM
To: McCambridge, Michael <Michael.McCambridge@illinois.gov>
Cc: Diers, Stefanie <Stefanie.Diers@Illinois.gov>; Tipsord, Marie <Marie.Tipsord@illinois.gov>; Fox, Tim <Tim.Fox@illinois.gov>; Brown, Don <Don.Brown@illinois.gov>; Flowers, Stephanie <Stephanie.Flowers@Illinois.gov>; jonathanE@ilga.gov; westefer.gary@epa.gov; Khayyat, Katy <Katy.Khayyat@Illinois.gov>; Brown, Don <Don.Brown@illinois.gov>; mike.mankowski@illinois.gov
Subject: RE: Identical in substance scenario
Importance: High

Mr. McCambridge,

I am just following up again on R21-1- and R22-2. Is the Board still anticipating proposing identical in substance language of the LCRR? Pursuant to 40 CFR 142.12(b)(1), State requests for approval of primacy program revisions to adopt new or revised USEPA regulations must be submitted to USEPA no later than 2 years after promulgation of the new USEPA regulations. The LCRR was promulgated and effective December 16, 2021. Therefore, Illinois EPA must submit its primacy package containing (among other things) the adopted identical in substance rule language to USEPA for approval by December 16, 2023.

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Do you have any indication of a new proposal adopted date (and subsequent schedule to follow)?

If the Board anticipates that adoption of an identical in substance rule of the LCRR will not be possible by December 16, 2023, the Agency will need to request an extension from USEPA to submit its primacy package.

Thank you,

Sara G. Terranova
Assistant Counsel
Illinois EPA
(217) 558-3098

From: McCambridge, Michael <Michael.McCambridge@illinois.gov>
Sent: Thursday, April 13, 2023 11:52 PM
To: Terranova, Sara <Sara.Terranova@Illinois.gov>
Cc: Diers, Stefanie <Stefanie.Diers@Illinois.gov>; Tipsord, Marie <Marie.Tipsord@illinois.gov>; Fox, Tim <Tim.Fox@illinois.gov>; Brown, Don <Don.Brown@illinois.gov>; Flowers, Stephanie

<Stephanie.Flowers@Illinois.gov>; jonathanE@ilga.gov; westefer.gary@epa.gov; Khayyat, Katy
<Katy.Khayyat@Illinois.gov>; Brown, Don <Don.Brown@illinois.gov>; mike.mankowski@illinois.gov
Subject: RE: Identical in substance scenario

We plan a proposal for public comment at the May 18, 2023 Board meeting.

From: Terranova, Sara <Sara.Terranova@Illinois.gov>
Sent: Wednesday, April 12, 2023 8:49 AM
To: McCambridge, Michael <Michael.McCambridge@illinois.gov>
Cc: Diers, Stefanie <Stefanie.Diers@Illinois.gov>; Tipsord, Marie <Marie.Tipsord@illinois.gov>; Fox, Tim <Tim.Fox@illinois.gov>; Brown, Don <Don.Brown@illinois.gov>; Flowers, Stephanie <Stephanie.Flowers@Illinois.gov>; Terranova, Sara <Sara.Terranova@Illinois.gov>; jonathanE@ilga.gov; westefer.gary@epa.gov; Khayyat, Katy <Katy.Khayyat@Illinois.gov>; McCambridge, Michael <Michael.McCambridge@illinois.gov>; Brown, Don <Don.Brown@illinois.gov>; mike.mankowski@illinois.gov
Subject: RE: Identical in substance scenario

Good morning. I am just following up on R21-10 and R22-2.

As of the November 2, 2022 Order, the Board published the following schedule for the Identical in Substance rulemaking:

Proposal adopted date: Thursday, January 5, 2023
Publication submission deadline: Monday, January 9, 2023
Expected Illinois Register 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 Illinois Register publication: Friday, April 7, 2023

Is there any indication of a new proposal adopted date (and subsequent schedule to follow)?

Thank you,

Sara G. Terranova
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From: McCambridge, Michael <Michael.McCambridge@illinois.gov>
Sent: Thursday, March 16, 2023 7:09 PM
To: Terranova, Sara <Sara.Terranova@Illinois.gov>
Cc: Diers, Stefanie <Stefanie.Diers@Illinois.gov>; Tipsord, Marie <Marie.Tipsord@illinois.gov>; Fox, Tim <Tim.Fox@illinois.gov>; Brown, Don <Don.Brown@illinois.gov>
Subject: RE: Identical in substance scenario

If you refer to the *Federal Register* notice of December 17, 2021 (86 Fed. Reg. 71574), I have it. In that notice, USEPA reiterates the October 16, 2024 compliance date that it established on June 16, 2021 (86 Fed. Reg. 31939).

I examined a number of sources today for information about the LCRI, including some relating to the litigation over the LCRR. The major issues seem to surround the lack of an MCL for lead, the speed and thoroughness of replacing LSLs, and EJ issues. I read that the only area USEPA will not change with the LCRI is LSL inventory requirements.

Don Brown: Please replace the earlier e-mails with this one, but retain the USEPA memo attached to the last e-mail. Have I confused you yet?

From: Terranova, Sara <Sara.Terranova@Illinois.gov>

Sent: Thursday, March 16, 2023 1:29 PM

To: McCambridge, Michael <Michael.McCambridge@illinois.gov>

Cc: Diers, Stefanie <Stefanie.Diers@Illinois.gov>; Tipsord, Marie <Marie.Tipsord@illinois.gov>; Fox, Tim <Tim.Fox@illinois.gov>

Subject: Re: Identical in substance scenario

Mr. McCambridge, As a follow up to your question if I had any indication where USEPA is going with the LCRI, please see the attached memo from USEPA regarding State Primacy for the 2021 Lead and Copper Rule Revisions. Specifically, please see Section II. USEPA states: "As described in the December announcement, EPA intends to propose significant changes to the LCRR requirements that could affect all parts of the rule other than the initial inventory submission." I can also pull the federal register in which this memo is referencing if that would be helpful.

You also mentioned the implementation deadline for the LCRR is October 16, 2024. Could you tell me where that deadline originated from?

I appreciate your time on this!

Sara

From: McCambridge, Michael <Michael.McCambridge@illinois.gov>

Date: Tuesday, March 14, 2023 at 8:01 PM

To: Terranova, Sara <Sara.Terranova@Illinois.gov>

Cc: Diers, Stefanie <Stefanie.Diers@Illinois.gov>, Tipsord, Marie <Marie.Tipsord@illinois.gov>, Fox, Tim <Tim.Fox@illinois.gov>

Subject: RE: Identical in substance scenario

As you may be aware, I had hoped to retire in January. However, I am working to update and correct the text of Part 611 (and the hazardous waste rule in Subtitle G) before I leave. I delayed my retirement to do this. I am the person most familiar with these rules and the federal program they implement, and I do not want to burden the State with what I see needs doing after my departure, so I remain.

At present, the R21-10/R22-2 SDWA update has my full attention, and this will continue until I have a proposal before the Board. I believe the Board will propose amendments this Spring.

Having said this, I would recommend against delaying adopting the LCRR until USEPA adopts the LCRI unless the LCRI proves to be inconsistent with the LCRR. The implementation deadline for the LCRR is October 16, 2024. I have completed work on the LCRR (and continue work on the rest of Part 611) for proposal.

I hope to retire sometime during 2024—maybe as late as January 1, 2025. I would not feel comfortable leaving the LCRI and the LCRR to my successor, since I think Jointly incorporating the combined LCRI and LCRR into the Illinois rules would be a much more difficult task. Whoever takes over for me will be on a steep learning curve, and the combination of both rules will make that climb more difficult.

Do you have any indication where USEPA is going with the LCRI? That information could sway my opinion.

Further, R21-10/R22-2 includes the “lead free” fixtures and fitting rule and alternative equivalent methods that should go forward. Further, I have the handful of essential corrections and many non-substantive stylistic corrections I am reviewing. I do not want to leave those undone. It is easier at this point to proceed than to reverse those.

Working on the LCRR, I stumbled into section 17.12 and its requirement for rules for replacing lead service lines. I did not have the luxury of time to figure out what they would add to the LCRR requirements. I see many provisions in section 17.12 that seem more stringent than those in the LCRR.

Deciding what is within a statutory IIS mandate is a call for the Board. I can only advise the Board what I believe. There are others who speak more persuasively than I, and they take into account factors beyond my pay grade. (I may have acquired 35 years of experience in the federal IIS programs, but I have not progressed to the ranks of those who really matter at the Board.)

I personally evaluate whether a subject matter is within an IIS mandate based on several

considerations:

1. The statutory authority USEPA used to adopt a federal rule;
2. How cleanly a federal rule falls within an IIS program area;
3. Whether (and how clearly) USEPA has established a standard for the State to implement;
4. Whether the rule implements a federal standard the State has no discretion but to implement to obtain/maintain primacy;
5. Whether the rule falls within Board and Agency functions under the statutory framework (if not, whether including the federal rule would aid a sister agency in Illinois, like DPH);
6. The measure of substantive discretion needed to craft the rule, as opposed to discretion over the details and mechanics of the rule;
7. Whether public comments in an IIS proceeding would inform the Board's discretion as well as would section 27 rulemaking;
8. Whether using the IIS procedure would run afoul of statutory intent (and JCAR);
9. Whether there is any interested sector that would prefer the Board pursue section 27 rulemaking for substantive reasons;
10. Whether the speed of IIS rulemaking would aid fulfilling a federal or Illinois statutory deadline; and
11. Whether the rule preserves a more stringent and not inconsistent Illinois rule already established by section 27 rulemaking.

On the last point, section 7.2(a)(6) provides: "Wherever appropriate, the Board regulations shall reflect any consistent, more stringent regulations adopted pursuant to the rulemaking requirements of Title VII of this Act and Section 5-35 of the Illinois Administrative Procedure Act." This does not directly consider accommodating more stringent Illinois statutory requirements, but arguments may favor doing so. That is a decision for the Board informed by public comments. At the least, the IIS rules might benefit from appropriately placed Board notes highlighting more stringent Illinois statutory requirements.

I looked at section 17.12 prompted by your observation that the rules will not be IIS to USEPA's LCRR and LCRI requirements. I see many statutory requirements embellishing or changing what LCRR requires. Many aspects of section 17.12 may be more stringent than rules in the LCRR. (I do not consider requirements for funds to aid replacing lead service lines, MOBE requirements, bid and contract requirements, etc. that are outside the Board's ordinary function.) Absent detailed consideration of how 17.12 differs from the LCRR and whether section 7.2(a)(6) embraces more stringent Illinois statutory requirements, I would suggest that section 27 rulemaking will be needed to incorporate section 17.12 rules.

As you are aware, these are all matters for informed Board decision. I cannot form an opinion in specific any regard without more information and careful consideration. I can only speak in general terms of the considerations coming directly to my mind.

I will inform the Board that an issue may exist, and I (or someone else) will compare section 17.12 and LCRR in more detail after I have assembled a proposal for the Board. I want nothing to slow that already-delayed process on a proposal for R21-10/R22-2.

If you need more information, please ask. If you can provide information on the LCRI or the nature of any prospective section 17.12 rules, please do so.

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From: Terranova, Sara <Sara.Terranova@Illinois.gov>
Sent: Tuesday, March 14, 2023 3:05 PM
To: McCambridge, Michael <Michael.McCambridge@illinois.gov>
Cc: Diers, Stefanie <Stefanie.Diers@Illinois.gov>
Subject: Identical in substance scenario

Mr. McCambridge,

Almost a year later now, I have a few more questions I am hoping you can help me with!

Pursuant to Section 1413 of the Safe Drinking Water Act (42 USCS 300g-2), when USEPA issues new drinking water regulations, primacy agencies are required to submit requests for approval of modifications of their program to adopt these new requirements no later than two years after the EPA regulation is promulgated. States may also apply for an extension of up to two years. Currently, the primacy application deadline for the Lead and Copper Rule Revisions (LCRR) is December 2023. However, because USEPA intends to propose the Lead and Copper Rule Improvements (LCRI) in fall 2023, and take final action in 2024, USEPA is encouraging states to apply for an extension to the December 2023 primacy deadline so as to group the program revisions for the LCRR and LCRI into a single primacy application. The new primacy application deadline would be December 2025.

Question: Does the Board anticipate adopting both the LCRR and LCRI in R21-10 and R22-2, an identical in substance rulemaking proceeding, prior to the December 2025, primacy deadline (presuming an extension from USEPA is granted)?

Section 17.12 of the Illinois Environmental Protection Act (Act) lays out State regulations regarding lead line replacement and notification, following the federal LCRR. The Illinois EPA anticipates drafting and proposing to the Board State rules necessary to implement and administer this Section of the Act. These rules *will not* be identical in substance to the federal language in the LCRR or the

LCRI.

Section 7.2 of the Act states the Board regulations shall reflect any consistent, more stringent regulations adopted pursuant to the rulemaking requirements of Title VII of the Act and Section 5-35 of the Illinois Administrative Procedure Act.

Question: Should the Agency propose rules that implement and administer Section 17.12 of the Act within the Board's identical in substance rulemaking in R21-10 and R22-2, or should the Agency simultaneously propose these rules in separate rulemaking process?

I appreciate your help!

Thanks,

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From: McCambridge, Michael <Michael.McCambridge@illinois.gov>

Sent: Monday, April 25, 2022 12:38 PM

To: Terranova, Sara <Sara.Terranova@Illinois.gov>

Cc: Tipsord, Marie <Marie.Tipsord@illinois.gov>; Diers, Stefanie <Stefanie.Diers@Illinois.gov>; Fox, Tim <Tim.Fox@illinois.gov>; McGill, Richard <Richard.McGill@illinois.gov>

Subject: RE: Identical in substance scenario

My opinion on IIS rulemaking might differ from others' on the fringes of IIS rulemaking. I have seen IIS rulemaking efficiently do amazing things where there are clear existing standards to draw from.

Ordinarily, the existing standards are federal. Occasionally, there is an Illinois statutory or regulatory requirement that the IIS rulemaking must retain or incorporate into IIS rules. IIS rulemaking does this readily where those State requirements are defined, and a full record is not needed to derived them.

An IIS record, consisting of the federal and State rules and statutory provisions reciting clear standards supplemented by information the Agency and interested parties submit, can enable the Board to adopt clear, existing standards. Where the Board needs guidance, the Board has a history of seeking it.

Where the Board requires information to develop the standard or how it applies, IIS rulemaking is inappropriate. General rulemaking is the appropriate route where the Board must substantively derive a standard or how to implement a standard.

I can think of existing State statutory or regulatory standards in each of the IIS program areas that the Board worked around to establish and/or maintain IIS rules. They all worked well. In nearly all IIS mandates, there is a provision clearly directing the Board to adopt more stringent State standards by general rulemaking. It does not matter whether the more stringent State standards arose before

or after the advent of IIS rules. Reviewing the IIS rules, Board notes will indicate those State-only or more stringent State standards.

The IIS rules have worked well in eight subject matter areas. I offer my personal opinion that is would have worked better for recent federally derive rules that proceeded by general rulemaking.

The Board adopted federal CCR standards by general rulemaking. There was substantial attack on the underlying minimum federal standards in the rulemaking. Attack on the underlying federal standard (or any Illinois statutory standard) is irrelevant in an IIS proceeding. The Board could not have deviated from the minimum federal standards in the context of an IIS rulemaking absent clear statutory direction that the Board should use some other standard. Further, the only way the Board can change a State-only rule in the context of IIS rulemaking is if the State rule is inconsistent with a corresponding USEPA standard.

The State will struggle to keep up with USEPA changes in the evolving federal CCR program. An IIS mandate for CCR rules would have obviated that. The historical precedent is the NAAQS program. The State struggled with rules before the General Assembly made those the subject of IIS rulemaking.

This is all speculative with no idea of a specific subject matter prompting your questions. I hope I addressed your concerns. If I have not, more information might allow me to do so.

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From: Terranova, Sara <Sara.Terranova@Illinois.gov>
Sent: Friday, April 22, 2022 12:26 PM
To: McCambridge, Michael <Michael.McCambridge@illinois.gov>
Cc: Diers, Stefanie <Stefanie.Diers@Illinois.gov>
Subject: Identical in substance scenario

Mike, I have some general procedural questions regarding identical in substance rulemakings. Would you be available for a call this afternoon or early next week to talk?

Below are my questions:

In a scenario where there is a requirement to adopt federal language and there is corresponding state statutory language that expands beyond the requirements in the federal language – would this scenario call for an identical in substance rulemaking? Would only the federal language be required to go through the identical in substance process and the additional state language go through a traditional rulemaking process? Could the required federal language be adopted as written and

supplemented then with the additional state statutory requirements in one rulemaking? Or is there another scenario all together I am not considering?

I would very much appreciate your insight!

Thanks!

Sara Terranova

Assistant Council

Division of Legal Counsel, Illinois EPA

217-872-5544

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