

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

|  |   |                                     |
|--|---|-------------------------------------|
| 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)                              |

**NOTICE OF FILING**

TO: See Service List

PLEASE TAKE NOTICE that I have today filed with the Illinois Pollution Control Board, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S COMMENTS on behalf of the Illinois Environmental Protection Agency, a copy of which is served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Sara Terranova  
Sara Terranova  
Assistant Counsel  
Division of Legal Counsel

DATED: August 28, 2023

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|  | ) | Water)                              |

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S COMMENTS**

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, ("Illinois EPA" or "Agency") by and through its counsel, submits the following comments in the above captioned rulemaking:

1) While the Agency acknowledges and appreciates the Illinois Pollution Control Board’s (“Board”) extensive and hard work in drafting the proposed rules, the Agency respectfully believes the language is 1) inconsistent with the federal Lead and Copper Rule Revisions (“LCRR”) in places and 2) does not take into consideration the Section 17.12 of the Illinois Environmental Protection Act (“Act”); Lead Service Line Replacement and Notification. See 415 ILCS 5/17.12.

2) The Act states that the Illinois Pollution Control Board (“Board”) shall:

*...adopt the verbatim text of such USEPA regulations as are necessary and appropriate for authorization of the program. In adopting "identical in substance" regulations, the only changes that may be made by the Board to the federal regulations are those changes that are necessary for compliance with the Illinois Administrative Code, and technical changes that in no way change the scope or meaning of any portion of the regulations.*

See 415 ILCS 5/7.2 (2020). As the Board shall adopt *verbatim* and there are no substantive changes to the federal language in an identical in substance (“IIS”) rulemaking, the Act also allows for a quick adoption. See 415 ILCS 5/17.5 (2020). In the present matter, the Board held a 45-day comment period after publication in the Illinois Register on July 14, 2023, with an estimated

adoption date of the federal language on September 7, 2023. *See* Il. Reg. Vol. 47, Issue 28 at 9557 (July 14, 2023) and R21-10 and R22-2, Opinion and Order at 3 (June 1, 2023).

3) However, after a review of the proposed IIS language, it appears the language is inconsistent with the federal LCRR in many places. This is problematic. Not only does the proposed language go beyond the Board's statutory authority, but there is not sufficient time for a proper review of the proposed language to ensure these changes *are necessary and appropriate for authorization of the program*. *See* 415 ILCS 5/7.2 (2020). For the required State primacy approval of the LCRR, the Agency must submit the Board's adopted language to the United States Environmental Protection Agency ("U.S. EPA") by December 2023. *See* 40 CFR 142.12(b)(1). As proposed, the Board's IIS language may not allow for the State primacy approval of the LCRR.

4) The Board stated it was able to draft language with minimal deviations from the federal text and changes to the federal language were only stylistic and for clarification. *See* and R21-10 and R22-2, Opinion and Order at 47 (June 1, 2023). However, as outlined in the Agency's section-by-section comments below, these stylistic and clarifications often resulted in inadvertent substantive changes to the meaning of the text, omissions of substantive language, and grammatical and clerical errors.

5) In addition to the inconsistencies with the federal LCRR (and the potential jeopardy to the State's primacy approval), the Board's IIS rulemaking does not take into consideration the more stringent requirements regarding lead line replacement and notification in the Act. *See* 415 ILCS 5/17.12. The result of the Board's IIS rule coexisting with the requirements in Section 17.12 of Act, is much confusion.

6) While the Agency recognizes the Board's predicament, as the Board is statutorily required to adopt the LCRR in an IIS rulemaking so the State may receive primacy approval

from U.S. EPA (*See* 415 ILCS 5/7.2), this is an inefficient and repetitive process for the Board, the Agency, and even U.S. EPA. For this present matter, the Agency must seek primacy approval from U.S. EPA with the Board's IIS adopted language of the LCRR, then turnaround and propose to the Board another version of the rules which contains both the LCRR and the more stringent requirements in Section 17.12 of the Act, and finally then, reapply for primacy approval from U.S. EPA. There has got to be a better way.

7) At this point, the Agency encourages the Board to adopt verbatim the federal LCRR language in this rulemaking and all other IIS going forward to avoid these issues, especially where it causes the Agency to receive a disapproval from U.S. EPA with respect to primacy. Deviation should only be instances where Illinois is more stringent.

8) In addition to the above narrative, the Agency provides a more detailed section-by-section review:

**35 Ill. Adm. Code 611.350**  
**611.350(b) Definitions**

“Child Care Facility”: The Board's proposed language adds the word “competent” to the definition. What does “competent” mean? The Agency recommends striking this term.

**611.350(c): Lead Trigger Level and Lead and Copper Action Levels.**

The Agency recommends adding the complete citation to the referenced federal regulations to distinguish from the State regulations.

The supplier determines the lead trigger levels and lead and copper action levels based on tap water samples it collects under ~~Section~~ 40 CFR 141.86 to calculate the 90th percentile concentration and tests using the analytical methods in ~~Section~~ 40 CFR 141.89.

**611.350(c)(2)**

“0.015 µg/L” should read “15 µg/L.” *See* 40 CFR 141.80(c)(2).

Correct spelling. “concentration” should be “concentration.”

**611.350(c)(3)**

Correct spelling. “concentration” should be “concentration.”

**611.350(c)(4)**

Correct spelling. "concentration" should be "concentration."

**611.350(c)(4)(A)**

The proposed language should be corrected to read:

Suppliers Not Having Sites with a Lead Service Line and Only Having Tier 3, 4, or 5 Sites Under ~~Section 40~~ CFR 141.86(a).

This will differentiate the State regulations from the federal regulations being referenced.

**611.350(c)(4)(A)(ii)**

Please clarify the specification of the "four-month" tap sampling period and where this originates. In the alternative, strike this specification.

**611.350(c)(4)(A)(iv)**

Please clarify the specification of the "four-month" tap sampling period and where this originates. In the alternative, strike this specification.

**611.350(c)(4)(B):**

The proposed language should be corrected to read:

Suppliers Having Enough Sites with a Lead Service Line Identified as Tier 1 or 2 Under ~~Section 40~~ CFR 141.86(a) to Meet the Minimum Number of Sites ~~Section 40~~ CFR141.86(c) Requires

This will differentiate the State regulations from the federal regulations being referenced.

**35 Ill Adm. Code 611.350**

**611.351 (a)(1)(A) and(B)**

**611.351 (a)(2)(A), (B), and (C)**

**611.351 (a)(3)(A), (B), (C), and (D)**

As proposed, the language is not substantively consistent with the federal language.

Change "exceeding" back to "exceed." Once a system has one "good" round of monitoring they are no longer "exceeding" and the requirement, as proposed, seems to no longer apply. Since many of the OCCT steps take multiple monitoring periods this could cause a problem. These sections have schedules that last longer than one monitoring period.

**611.351(d)**

It is unclear why "described in the referenced portions of Sections 611.352, 611.356, and 611.357" was changed to "the referenced portions of Sections 611.352, 611.356, and 611.357 the steps describe."

**611.351(d)(1)(B)**

As proposed, the language is not substantively consistent with the federal language.

Change “exceeding” back to “exceed.” Once a system has one “good” round of monitoring they are no longer “exceeding” and the requirement, as proposed, seems to no longer apply. Since many of the OCCT steps take multiple monitoring periods this could cause a problem. These sections have schedules that last longer than one monitoring period.

**611.351(d)(2)(B)**

“Water system supplier” should just read “supplier.”

**611.351(d)(3)(A)**

As proposed, the language is not substantively consistent with the federal language.

Change “exceeding” back to “exceed.” Once a system has one “good” round of monitoring they are no longer “exceeding” and the requirement, as proposed, seems to no longer apply. Since many of the OCCT steps take multiple monitoring periods this could cause a problem. These sections have schedules that last longer than one monitoring period.

**611.351(d)(4)(A)**

Should cite to subsection 611.351(d)(3)(A) rather than subsection 611.351(e)(3)(A).

**611.351(e)**

It is unclear why “described in the referenced portions of Sections 611.352, 611.356, and 611.357” was changed to “the referenced portions of Sections 611.352, 611.356, and 611.357 the steps describe.”

**611.351(e)(2)**

For consistency with federal requirement, should cite to 611.352(b)(1) and 611.352(d)(1), rather than 611.352(b) and 611.352(d).

Do not need both a period and a colon at the end of the section.

Should read, “...within the appropriate ~~of the~~ timeframes subsections (e)(2)(A) and (e)(2)(B) establish.”

**611.351(e)(2)(B)**

Correct spelling: “onitoring” should be “monitoring.”

**611.351 (e)(3)(A)**

As proposed, the language is not substantively consistent with the federal language.

Change “exceeding” back to “exceed.” Once a system has one “good” round of monitoring they are no longer “exceeding” and the requirement, as proposed, seems to no longer apply. Since many of the OCCT steps take multiple monitoring periods this could cause a problem. These sections have schedules that last longer than one monitoring period.

**35 Ill. Adm. Code 611.352**

**611.352(c)(1)(D)**

Currently reads “D4” – strike “4.”

**611.352(c)(1)(D)(i)**

As proposed, the language is not substantively consistent with the federal regulation. *See* 40 CFR 141.82(c)(1)(iv)(A).

“Adversely affects” should be “adversely affected”.

Add “Systems using coupon studies to screen and/or pipe loop/rig studies to evaluate treatment options must not exclude treatment strategies from the studies based on the constraints identified in this section.”

**611.352(c)(1)(D)(ii)**

As proposed, the language is not substantively consistent with federal regulation. *See* 40 CFR 141.82(c)(iv)(A).

Add “Systems using coupon studies to screen and/or pipe loop/rig studies to evaluate treatment options must not exclude treatment strategies from the studies based on the constraints identified in this section unless the treatment was found to be ineffective in a previous pipe loop/rig study.”

**611.352(c)(2)(A)(i)**

As proposed, the language is not substantively consistent with the federal regulation. *See* 40 C.F.R. 141.82(c)(2)(i)(A).

Add “and/” so the sentence reads:

Alkalinity and/or pH adjustment, or re-adjustment;

**611.352(c)(2)(D)(i)**

As proposed, the language is not substantively consistent with the federal regulation. *See* 40 CFR 141.182(c)(2)(iv)(A).

Add “and/” so the sentence reads:

Systems using coupon studies to screen and/or pipe loop/rig studies to evaluate treatment options must not exclude treatment strategies from the studies based on the constraints identified in this section.

**611.352(c)(2)(E)**

As proposed, the language is not substantively consistent with the federal regulation. *See* 40 CFR 141.182(c)(2)(v).

Add “and/” so the sentence reads:

Systems using coupon studies to screen and/or pipe loop/rig studies to evaluate treatment options shall not exclude treatment strategies from the studies based on the effects identified in this section.

**611.352(d)**

As proposed, the language is not substantively consistent with federal regulation. *See* 40 CFR 141.82(d).

Add language requiring a water system to provide information if the Agency requests additional information to aid its review.

**611.352(h)(1)**

Please clarify why language allowing “other interested parties” to request a modification was not included. *See* 40 CFR 141.82(h).

**35 Ill. Adm. Code 611.354**

**611.354(b)(6)**

Please clarify what “etc” refers to and why it is included.

**611.354(f) and (g)**

As proposed, the language is not substantively consistent with the federal language.

Change “exceeding” back to “exceed.” Once a system has one “good” round of monitoring they are no longer “exceeding” and the requirement, as proposed, seems to no longer apply. Since many of the OCCT steps take multiple monitoring periods this could cause a problem. These sections have schedules that last longer than one monitoring period.

**611.354(g)(7)**

As proposed, the Board’s language is confusing. For clarification the Agency suggests:

any documents memorializing no response from customers after the supplier made at least two good faith attempts to reach the customer, each attempt offering to replace the full lead service line

**35 Ill. Adm. Code 611.355(a)(1)**

**611.355(a)(1)**

As proposed, the language is not substantively consistent with federal language. *See* 40 C.F.R. 141.85(a)(1). The Board’s proposed language does not state the Agency may require the supplier to obtain approval of the content of written public materials prior to delivery.

**611.355(b)(2)(C)**

Formatting makes it appear as though all of the text following “system-specific information:” must be included on the water bill. Would benefit from another paragraph break after “[or visit (INSERT SUPPLIER’S WEB SITE HERE)].”

**611.355(b)(3)(C)**

There are inconsistencies throughout between “website” and “Web site.”

**611.355(b)(7)**

Removal of the comma between “Agency” and “in” is grammatically incorrect and does not match federal language. The Agency recommends either re-add the comma or also remove the comma after “writing.”

**35 Ill. Adm. Code 611.356**

**611.356(a)(2)**

As proposed, the language is not substantively consistent with federal language. *See* 40 CFR 141.86(a)(2). “is required to be identified” does not have the same meaning as “identified” – changed meaning when changing to active voice.

**611.356(b)(2)(B)**

Proposed language does not specify that first-draw tap samples must be collected in “wide-mouth one-liter sample bottles” and only specifies “wide-mouthed bottles.”

**611.356(b)(3)(B)(iii)**

The proposed language does not specify that first-draw tap samples must be collected in “wide-mouth one-liter sample bottles” and only specifies “wide-mouthed bottles.”

**611.356(b)(4)(A)**

There are inconsistencies throughout between “samples” and “sample.”

**611.356(d)(2)(B)**

As proposed, the language is not substantively consistent with federal language. *See* 40 CFR 141.86(d)(2)(ii)4. Changed “as a result of” to “after,” which changes the meaning.

**611.356(g)(2)**

As proposed, the language is not substantively consistent with federal language. *See* 40 CFR 40 CFR 141.86(g)(2). Removal of “and/” makes the language exclusive.

**611.356(g)(3)**

Please clarify what “etc.” means here.

**611.356(g)(7)(A)**

Should be “continues to be eligible” rather than “continues eligible.”

**35 Ill. Adm. Code 357**

**611.357(a)(1)(A)**

As proposed, the language is not substantively consistent with federal language. *See* 40 CFR 40 CFR 141.87(a)(1)(i). The Board’s language omits the caveat in the Note: “if a system also meets the requirements of the section.”

**611.357(c)(1)**

The proposed language should read “corrosion control treatment under Section 611.351(d)(5)” rather than “corrosion control treatment under Section 611.351(d)(54).”

**611.357(d)(1)(B)**

The proposed language “supplier must exceeding an action level must begin” should be “supplier exceeding an action level must begin.”

**35 Ill. Adm. Code 611.359**

**611.359(a)(4)**

Should this apply to all of subsection(a) or just subsection(a)(1)? To be consistent with the federal language, should be all of subsection(a).

**35 Ill. Adm. Code 611.360**

**611.360(a)(1)**

Why was reference to Section 611.356 removed but not reference to 611.357?

**611.360(a)(1)(B)**

Why was “documentation” changed to “supporting documents”? Is there any difference in meaning?

**611.360(a)(1)(C):**

Redundant to say “then the more frequent of annually or prior to the each subsequent round of tap sampling the supplier conducts, whichever is more frequent.”

**611.360(a)(1)(C)(i)**

Should this be “a list of tap sampling WQP sites” rather than “a list a tap sampling WQP sites”? It technically matches the federal language, but it does not make grammatical sense.

**611.360(a)(1)(E):**

Should this refer to 611.356(d)(1) or 611.356(d)(1)(A)? To be IIS with the federal language, should be 611.365(d)(1)(A).

**611.360(a)(1)(F)**

Why does this refer to 611.357(b) through (e) instead of (g)?

**611.360(e)(9)**

As proposed, the language only states that supplier must provide schedule-all other federal provisions omitted. Can the Board provide clarification why?

**35 Ill. Adm. Code 611.361**

**611.361**

The proposed language includes different citations but should ultimately reference the same thing- the only change is the inclusion of Section 611.359.

**35 Ill. Adm. Code 611.362**

**611.362(d)(1)(B)(ii)**

As proposed, the language cites to 611.126(j) – is this necessary?

**611.362(d)(1)(D)**

Specifies “voluntary school and child care program lead testing grant” rather than just “grant” – is this the only type of grant specified under section 1464(d) of SDWA?

**35 Ill. Adm. Code 611.363**

**611.363**

Uses “flexibility options” language rather than “alternatives” – why?

**611.363(a)(3)(A)(i)**

As proposed, the language is not substantively consistent with the federal regulation.

Change “or” back to “and/or.”

**Section 611.363(a)(3)(C)**

As proposed, the language is not substantively consistent with the federal regulation. “including but not limited to” changed to just “including” – changes substantive meaning.

**611.363(a)(3)(D)**

As proposed, the language is not substantively consistent with the federal regulation.

Change “or” back to “and/or.”

**611.363(a)(4)**

As proposed, the language cites to Section 611.126(c) rather than SDWA.

**35 Ill. Adm. Code 611.490**

**611.490**

As proposed, missing complete list of all Subparts. The proposed language should read:

For the purpose of determining compliance with Subparts G, K through O, Q, ~~and S~~, and AG samples will be considered only if they have been analyzed by one of the following:

**35 Ill Adm Code 611.840**

**611.840**

The Board Note at the end of Section 611.840 states “This Section derives from 40 CFR 141.31.” Can the Board specify which specific subparts within the Section meet the specific federal requirements in 40 CFR 141.31 (d)(1) and 40 CFR 141.31 (d)(2). If the language varies from the federal language can the Board provide the reason for the variation.

**35 Ill. Adm. Code 611.1350**

**611.1350a2**

As proposed, references subpart G rather than subpart AG.

**611.1350b Definitions**

As proposed, references subpart G rather than Subpart AG

**40 CFR 141.42.(d)**

Several citations to 40 CFR 141.42(d) directly, but no State equivalent.

**40 CFR 141.43**

The Section deriving from any part of 40 CFR 141.43 has been deleted.

**40 C.F.R. 141.84(c)(6)**

As proposed, no State equivalent.

**40 CFR 141.90(i)(3)**

As proposed, no State equivalent.

WHEREFORE, the Agency requests the Board accept its Comments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Sara Terranova  
Assistant Counsel  
Division of Legal Counsel

DATED: August 28, 2023

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**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on August 28, 2023, I served true and correct copies of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S COMMENTS upon the persons and by the methods pursuant to the service list hereto attached.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Sara Terranova  
Assistant Counsel  
Division of Legal Counsel

DATED: August 28, 2023

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