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IEPA MOVES TO PROTECT AND STRENGTHEN ILLINOIS' COMMUNITY WATER SUPPLIES

New rules mandate use of certified workers on corrosion projects

Aurora, IL (Dec. 3, 2020) – The Illinois Environmental Protection Agency (IEPA) has announced the adoption of new rules designed to help protect and strengthen community water supplies throughout Illinois. The rules were adopted in response to an amendment to the state's Environmental Protection Act directing the IEPA to adopt standards and requirements governing corrosion prevention projects carried out on community water supplies.

The new rules stipulate that corrosion prevention and mitigation work must be carried out in accordance with defined standards based on industry best practices. This includes the use of certified protective coatings workers trained in the highly specialized equipment, products, and methods of corrosion work. They also establish standards to prevent environmental degradation that could occur as a result of improperly performed corrosion work – for instance, from the mishandling of hazardous materials such as lead-based paint.

A new requirement also stipulates that community water systems must use inspectors to ensure the adopted standards are followed on each corrosion prevention project.

Prior to the adoption of the new standards, no worker training mandates were in place, and contractors performing corrosion work were not required to utilize certified workers. As a result, corrosion work was sometimes performed incorrectly by inadequately trained workers.

According to industry experts, improper handling of corrosion projects can result in needless and costly repairs and replacements, reduced water supply capacity, environmental risks, and health and safety hazards to both workers and residents. With the adoption of the new standards, corrosion workers must meet an independent, industry-defined standard of training and competence.

“This move by the IEPA is a bold step in the right direction,” says Todd Dotson, Executive Director of the Tri-Council Development Fund, a collaborative of Illinois’ organized finishing trades that advocates for policies and practices that protect and strengthen community infrastructure. “Illinois communities cannot effectively compete and grow without strong water supplies. Research shows that every dollar invested in community water systems yields a \$2.62 increase in revenue across all industries. These new standards will make our communities stronger and protect our citizens’ health and safety.”

According to research by worldwide corrosion authority NACE International, the cost of corrosion in the U.S. amounts to more than \$450 billion annually. A large portion of this cost is born both directly and indirectly by communities. However, 50 percent of these costs are preventable – the vast majority through the use of properly specified and applied protective coatings that protect steel, concrete, and other surfaces to prevent corrosion.

NACE and its equivalent organization in the area of protective coatings, SSPC, have established a joint industry standard for the certification of protective coatings application specialists. In adopting this standard, the IEPA has taken steps to protect Illinois’ community water supplies, many of which are aging or otherwise threatened by deferred maintenance and repairs.

The adopted rules do not apply to buried pipelines or routine maintenance activities, such as fire hydrant painting, repainting of building interiors or exteriors, and routine touch-ups of protective coatings.

The Tri-Council Development Fund (TCDF) is a partnership of labor-management organizations within the Illinois finishing trades. The TCDF utilizes the collective leadership, advocacy, training, and other resources of these organizations to protect workers, support contractors, and strengthen Illinois communities. As a community-focused initiative, the TCDF partners with municipal governments, community-based organizations, and other stakeholders on projects that promote high-road construction practices, advance economic justice, and catalyze inclusive growth. For more information, see www.tcdfillinois.org.

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January 20, 2021



Community water supplies – public water systems that regularly serve more than 25 residents – are one of Illinois' most vital resources in helping to strengthen communities and safeguard public and environmental health.

As of 2019, the Illinois Environmental Protection Agency (IEPA) regulated 1,756 community water supplies (including both municipal and privately-owned water utilities) that served 12,031,118 individuals across the state.¹ Comprised largely of mains, pipes, storage tanks, pumping stations, treatment facilities, and other structures, all of these systems are subject to the damaging effects of corrosion, which can lead to costly repairs and replacements, reduced supply capacity, environmental risks, and health and safety hazards.

Making the problem worse, many of these systems are aging or otherwise suffering from the cumulative effects of years of deferred maintenance and repairs. In 2012, the U.S. EPA reported that Illinois had the 4th highest need in the country for drinking water infrastructure improvements, amounting to an estimated \$15 billion in projects over the next 20 years.²

The good news is that corrosion can be combated. Doing so requires the application of protective coatings to carefully prepared steel, concrete, and other surfaces. The highly specialized equipment, products, and methods involved mean that corrosion prevention and mitigation require workers specially trained in industrial coatings application.

¹ Illinois Environmental Protection Agency, "Annual Groundwater and Drinking Water Program Review, Calendar Year 2019," https://www2.illinois.gov/epa/Documents/iepa/compliance-enforcement/drinkingwater/2020_09_15Groundwater_Drinking_Water_Program_Review_CY19_Report_Final.pdf.

² Illinois EPA, 2012, "Clean Water Initiative Fact Sheet," <https://www2.illinois.gov/gov/Documents/Clean%20Water%20Initiative/CWI%20Legislative%20Fact%20Sheet%20final.pdf>.

Until now, the IEPA had no power to regulate worker training or required competencies with regards to corrosion work. This means that workers with no advanced training in corrosion control have frequently been utilized on these critical infrastructure projects, posing risks to water systems, the environment, and public health.

This month, however, the IEPA announced the adoption of new rules designed to help protect and strengthen community water supplies and safeguard the public and environment throughout Illinois.

The new rules stipulate that corrosion prevention and mitigation work must be carried out in accordance with defined standards based on industry best practices. This includes the use of certified protective coatings workers trained in corrosion work and additional standards to prevent environmental degradation that could occur as a result of improperly performed work – for instance, from the mishandling of hazardous materials such as lead-based paint.

To enforce the new regulations, a separate requirement stipulates that community water systems must use inspectors to ensure the adopted standards are followed on each corrosion prevention project. (The adopted rules do not apply to buried pipelines or routine maintenance activities, such as fire hydrant painting, repainting of building interiors or exteriors, and routine touch-ups of protective coatings.)

According to research by worldwide corrosion authority [NACE International](#), the cost of corrosion in the U.S. amounts to more than \$450 billion annually. A large portion of this cost is born both directly and indirectly by communities. However, 50 percent of these costs are preventable – the vast majority through the use of properly specified and applied protective coatings. Moreover, research shows that every dollar invested in community water systems yields a \$2.62 increase in revenue across all industries.

NACE and its equivalent organization in the area of protective coatings, [SSPC](#), have established a joint industry standard for the certification of protective coatings application specialists. This standard, known as SSPC ACS-1/NACE No. 13, is specifically incorporated into the new IEPA regulatory framework.

In adopting this standard, the IEPA has moved sensibly to protect Illinois' community water supplies by ensuring that corrosion workers must meet independent, industry-defined measures of training and competence.

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Sample Bid Document Language Community Water Supply Projects

The following paragraph can be inserted into bid documents for corrosion prevention and mitigation work on community water supply projects. The language references rules recently adopted by the Illinois Environmental Protection Agency and stipulates that compliance with these rules will be required by the bidder.

In November 2020, the Illinois Environmental Protection Agency adopted new standards for all Community Water Supplies – Title 35, Subtitle F, Chapter II, Part 652. Of particular note for this project are Sections 652.130 – Incorporation by Reference, 652.210 Corrosion Prevention Standards, and Section 652.220 – Corrosion Prevention of Community Water Supplies. Contractor shall adhere to all applicable referenced standards and sections, including the requirement for “protective coatings personnel.”

Understanding the Illinois Preference Act¹

Frequently Asked Questions

After two consecutive months of rising unemployment in Illinois brought on by the COVID-19 pandemic, the Illinois Department of Labor took the positive step of activating the [Illinois Preference Act](#) on July 1, 2020. Activation of the Act means that from this point forward until unemployment subsides 90% of workers on new and ongoing public works projects throughout the state *must live in Illinois*. This will help preserve jobs for Illinois workers and needed revenue for Illinois businesses and communities. Activation of the Act triggers certain notification responsibilities on the part of public bodies who undertake these projects. For more information, see the following FAQs:

What is the Employment of Illinois Workers on Public Works Act?

Employment of **Illinois Workers on Public Works Act (Illinois Preference Act)** Also known as the **Illinois Preference Act**, it requires contractors to use at least 90% **Illinois** laborers on all public works projects that receive State funds or funds administered by the State during a period of excessive unemployment.

When does the Illinois Preference Act take effect?

The Illinois Department of Labor activated the Illinois Preference Act on July 1, 2020. The Illinois Preference Act can be enacted by the Illinois Department of Labor the month immediately preceding “excessive unemployment” in the State of Illinois. A period of excessive unemployment is defined as any month immediately following 2 consecutive calendar months during which the level of unemployment in the State of Illinois has exceeded 5% as measured by the United States Bureau of Labor Statistics in its monthly publication of employment and unemployment figures.

What workers are included in the Illinois Preference Act?

The Act applies to **all labor on public works projects or improvements**, including projects involving the clean-up and on-site disposal of hazardous waste, but excluding emergency response or immediate removal activities, whether skilled, semi-skilled or unskilled, whether manual or non-manual.

How is the Illinois Preference Act enforced?

¹<https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=549&ChapAct=30%20ILCS%20570/&ChapterID=7&ChapterName=FINANCE&ActName=Employment+of+Illinois+Workers+on+Public+Works+Act>

It is the duty of the Department of Labor to enforce the provisions of this Act. The Department has the power to conduct investigations in connection with the administration and enforcement of this Act, and any investigator with the Department is authorized to visit and inspect, at all reasonable times, any places covered by this Act and is authorized to inspect, at all reasonable times, documents related to the determination of whether a violation of the Act exists. The Department may compel, by subpoena, the attendance and testimony of witnesses and the production of books, payrolls, records, papers, and other evidence in any investigation and may administer oaths to witnesses. The Department of Labor, as represented by the Attorney General, is empowered to: (i) issue and cause to be served on any person or entity an order to cease and desist from further violation of this Act, (ii) take affirmative or other action as deemed reasonable to eliminate the effect of the violation, (iii) collect any civil penalties assessed by the Department pursuant to Section 6 of this Act, and (iv) sue for injunctive relief against the awarding of any contract or the continuation of any work under any contract for public works or improvements or for the clean-up and on-site disposal of hazardous waste at a time when the provisions of this Act are not being met.

I am a Public Body, what do I do now?

As a public body engaged in the solicitation of or actual procurement of public works as defined within the Illinois Preference Act, you are required to notify any employer who has been retained for the purpose of performing public works that the Illinois Preference Act has been implemented by the Illinois Department of Labor and as such, each employer performing public works has a legal obligation to be in compliance with the Illinois Preference Act. If you are in the bidding stages of your public works project, as a public body you have the obligation to incorporate reference to the Illinois Preference Act within your solicitation of bid documents.

Understanding Illinois' Responsible Bidder Requirements¹

Frequently Asked Questions

What does the Illinois Municipal Code require?

For municipalities, the Municipal Code mandates that public works projects that exceed \$25,000 in total value must be let by competitive bid and awarded to the *lowest responsible bidder*.² However, competitive bidding is a process designed to promote honest, open, and fair government and to ensure that the municipality receives the best work for taxpayer dollars. Many municipalities therefore choose to publicly bid all public works projects irrespective of the \$25,000 threshold.

Are there exceptions to this rule?

One exception to the competitive bidding rule occurs when two-thirds of a municipality's governing body (e.g., village or city council or board of trustees) vote to award a contract without competitive bidding. This may occur through a vote giving a purchasing agent or other procurement official the authority to engage in any contract up to a certain dollar amount, or it may apply when two-thirds of the governing body vote to award a single project without competitive bidding.

What public bodies are required to follow the Illinois Municipal Code?

All cities, villages, and incorporated towns in the State of Illinois must adhere to the requirements of the Illinois Municipal Code. The Code does not extend to counties, townships, school districts, park districts, sanitary districts, or any other similar governmental district.

What is a responsible bidder?

When awarding public works contracts through the competitive bidding process, the municipality is required to award the contract to the lowest *responsible* bidder. Unfortunately, the act is silent as to what criteria describe the lowest responsible bidder. The lack of definition in the statute does not, however, absolve the municipality from the obligation to award public works contracts to the lowest responsible bidder.

Legal reasoning supports the development and application of a comprehensive criteria in determining whether a bidder is responsible, both as a means to vest procurement decisions with more validity and to encourage judgments based on competence, capability, responsiveness to the needs of the awarding public body (and the constituencies represented), and compliance with all applicable state and federal laws. Therefore, records of past job performance, quality of work, job site safety, legal compliance, hiring practices, worker training, and other measures of responsibility are normally considered in determining whether a bidder can be classified as responsible.

¹ <https://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=006500050K8-9-1>

² The procurement of general supplies or services not directly related to public works are exempt from the \$25,000 bidding threshold.

What are other statutory requirements of a responsible bidder?

To be considered a responsible bidder, the State of Illinois Procurement Code (30 ILCS 500/30-22)³ stipulates that a bidder must comply with all of the following requirements and must present satisfactory evidence of that compliance to the appropriate construction agency:

- The bidder must comply with all applicable laws concerning its entitlement to conduct business in Illinois.
- The bidder must comply with all applicable provisions of the Illinois Prevailing Wage Act.
- The bidder must comply with federal Equal Employment Opportunities requirements.⁴
- The bidder must have a valid Federal Employer Identification Number or, if an individual, a valid Social Security Number.
- The bidder must have a valid certificate of insurance showing coverage for general liability, professional liability, product liability, workers' compensation, completed operations, hazardous occupation, and automobiles.
- The bidder and all the bidder's subcontractors must participate in applicable apprenticeship and training programs *approved by and registered with* the United States Department of Labor's Bureau of Apprenticeship and Training.
- The bidder must certify that it will maintain an Illinois office as the primary place of employment for persons employed in the construction authorized by the contract.

What have the courts said about responsible bidder requirements?

In Illinois, it has long been understood that statutes requiring the awarding of contracts to the lowest *responsible* bidder protect purchasers from being required to award contracts to the lowest bidder, regardless of measures of responsibility. The courts have repeatedly reaffirmed the right and duty of public bodies to award bids to the lowest responsible bidder and have recognized the right of an unsuccessful bidder to challenge a decision made in apparent disregard of the lowest responsible bidder requirement.

Case law on this matter is extensive and spans more than a century.⁵ The Illinois Supreme Court has established and repeatedly upheld the principal that responsibility in contracting services means the ability of the bidder to perform or discharge what may be expected under the contract. Such ability, it is deemed, is of great importance to the municipality and the parties assessed to pay for the public works project. It is only by awarding the contract to a bidder capable of performing such services that the full benefit and advantage sought can be realized.

What can happen if a municipality simply awards a public works contract to the lowest bidder?

Public bodies are advised to articulate specific criteria for what constitutes a “responsible bidder” and to engage in some type of quality review of bidders. Those who simply award a public works

³ Source: Illinois P.A. 97-369, eff. 8-15-11; 98-1076, eff. 1-1-15.

⁴ As set forth in Subchapter VI (“Equal Employment Opportunities”) of Chapter 21 of Title 42 of the United States Code (42 U.S.C. 2000e and following) and Federal Executive Order No. 11246 as amended by Executive Order No. 11375.

⁵ See, for example, *People ex rel. Assyrian Asphalt Co. v. Ken*, 160 IL 665 (1896); *Hallet v. City of Elgin*, 1254 IL 343 (1912); and *People ex rel. Peterson v. Omen*, 290 IL 59 (1919). For more recent case law, see *Beaver Glass & Mirror v. Bd. Of Ed., Rockford School Dist.* 17 Dec. 378,376 N.E. 2d 377 (1978) and *S.N. Nielsen Co. v. Public Building Commission*, 81 IL 2nd 290, 410 N.E.2d 40 (1980).

contract to the lowest bidder and not the lowest responsible bidder could find themselves subject to a lawsuit brought by the lowest responsible bidder.

This document is not intended to be legal advice and is provided for informational purposes only.

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TRI-COUNCIL DEVELOPMENT FUND LAUNCHES 'CORROSION ILLINOIS NETWORK'

A new resource for community infrastructure stakeholders

Aurora, IL (March 17, 2021) – The Tri-Council Development Fund (TCDF) is proud to announce the creation of the Corrosion Illinois Network and the launch of the www.corrosionillinois.com website.

The Network is part of the ongoing work of the TCDF to promote the protection and expansion of community infrastructure assets to drive economic development and safeguard public health.

Representing a primary resource for infrastructure stakeholders in Illinois, the Network will focus on educational programs, technical assistance, and training opportunities in corrosion prevention and mitigation. Corrosion is a major cause of structural failures that shorten infrastructure asset life, incur unnecessary costs, limit systems' capacity to accommodate community growth, and threaten public health and safety.

The Network will partner with corrosion authorities such as the [Association for Materials Protection and Performance](#) (AMPP – formerly NACE and SSPC) and regional experts to offer online and in-person educational programs for engineers, architects, specification writers, facility owners and operators, and municipal officials in combating corrosion and maintaining strong, sustainable infrastructure. Continuing education credits required by many government entities and professional organizations will be offered in conjunction with many programs.

In addition, the Network and the www.corrosionillinois.com website will function as a clearinghouse for information on corrosion industry advancements, public policy, current issues, and best practices.

“We have a major challenge in front of us as a state and as individual communities to shore up our aging infrastructure,” said Todd Dotson, TCDF Executive Director. “The Corrosion Illinois

Network aims to be a partner in meeting that challenge. The educational opportunities and other information we will make available through the Network will be applicable to all jurisdictions and systems across the state. A key part of the TCDF's mission is helping to build strong communities, and the Corrosion Illinois Network takes a giant step forward toward fulfilling that mission."

To join the Corrosion Illinois Network for free, go to www.corrosionillinois.com and click the "join us" button. More information on webinars and other program offerings will be announced soon to all members.

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