

ILLINOIS POLLUTION CONTROL BOARD  
April 16, 2020

IN THE MATTER OF: )  
)  
EMERGENCY RULEMAKING FOR CROSS ) R20-20  
CONNECTION CONTROL DEVICE ) (Rulemaking - Water)  
INSPECTORS OF PUBLIC WATER )  
SUPPLIES 35 ILL. ADM. CODE 604.1520 )

Adopted Emergency Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by B.F. Currie):

On April 10, 2020, the Illinois Environmental Protection Agency (IEPA) filed an emergency rulemaking proposal with the Board. The emergency rule will extend the renewal period for cross connection control device inspectors (CCCDI). Under the general rule the renewal period is May 1, 2020 until June 30, 2020. 35 Ill. Adm. Code 604.1510. The emergency rule changes that period to August 31 to October 30. Prop. 35 Ill. Adm. Code 604.1520.

Governor J.B. Pritzker declared a state of emergency on March 9, 2020, and renewed that declaration on April 1, 2020. Because of the current state of emergency due to the pandemic caused by COVID 19, the Board agrees that an emergency exists and adopts the emergency rule.

Below the Board will summarize IEPA's proposal, delineate the statutory authority for emergency rulemaking, and finally explain why the Board agrees with IEPA's request.

**IEPA PROPOSAL**

IEPA explains that CCCDI are required to be licensed plumbers and are authorized to perform plumbing as described in the Illinois Plumbing License Law (225 ILCS 320/3(1)). 35 Ill. Adm. Code 604.1510(b)(1)(a). A CCCDI is approved by IEPA or its designee as being capable of performing the inspection of mechanical devices that prevent contamination of a community water supply from a source of an unsafe substance or of unknown water quality. SR. at 3. Manufacturing instructions of these devices require annual inspection. SR at 3-4.

The general rule requires:

CCCDIs must-renew the CCCDI Approval each year between May 1 and June 30. An application for CCCDI renewal will be sent by the Agency or its designee, and must be completed and returned by June 30 of the renewal year. 35 Ill. Adm. Code 604.1510(b)(2).

IEPA proposes to add as an emergency rule a new Section 1510.620 that provides:

Due to the public health emergency related to the COVID-19 outbreak, the CCCDI approval renewal application deadlines for 2020 pursuant to Section 604.1510(b)(2) are extended. For renewal year 2020, CCCDIs must-renew their CCCDI Approval between August 31 and October 30. An application for CCCDI renewal will be sent by the Agency or its designee and must be completed and returned by October 30, 2020. Prop. Section 1510.620.

IEPA notes that on March 31, 2020, the Illinois Department of Public Health (IDPH) published emergency rules extending the deadline for plumbers' license renewals, apprentice plumbers' license renewal, and plumbing inspectors' certificate renewals 120 days to August 28, 2020. SR at 3. IEPA explains that because CCCDIs must be licensed plumbers, IEPA proposes to extend the approval period for CCCDI for 120 days, consistent with the IDPH emergency rule. SR at 1.

### **STATUTORY AND REGULATORY BACKGROUND**

When adopting emergency rules, the Board must follow the dictates of both the Environmental Protection Act (Act), 415 ILCS 5 *et seq.* (2018) and the Illinois Administrative Procedure Act (IAPA), 5 ILCS 5/100 *et seq.* (2018).

Section 27 (a) and (c) of the Act provides in part:

The Board may adopt substantive regulations as described in this Act. \* \* \* 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.

On proclamation by the Governor, pursuant to Section 8 of the Illinois Emergency Services and Disaster Act of 1975, that a disaster emergency exists, or when the Board finds that a severe public health emergency exists, the Board may, in relation to any proposed regulation, order that such regulation shall take effect without delay and the Board shall proceed with the hearings and studies required by this Section while the regulation continues in effect.

When the Board finds that a situation exists that reasonably constitutes a threat to the public interest, safety or welfare, the Board may adopt regulations pursuant to and in accordance with Section 5-45 of the Illinois Administrative Procedure Act. 415 ILCS 5/27(a) and (c) (2018).

Section 5-45 of the IAPA provides in part:

- (a) "Emergency" means the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare.

- (b) If any agency finds that an emergency exists that requires adoption of a rule upon fewer days than is required by Section 5-40 and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing upon filing a notice of emergency rulemaking with the Secretary of State under Section 5-70. The notice shall include the text of the emergency rule and shall be published in the Illinois Register. Consent orders or other court orders adopting settlements negotiated by an agency may be adopted under this Section. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing under Section 5-65 or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons for the finding shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.
  
- (c) An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5-40 is not precluded.

\* \* \*

The IAPA goes on to provide that, after filing, emergency rules will be reviewed by the Joint Committee on Administrative Rules (JCAR). Under Section 100/5-120, JCAR examines an emergency rule “to determine whether the rule is within the statutory authority on which it is based and whether the rule is in proper form.” 5 ILCS 100/5-120(a) (2018). If JCAR determines a rule is non-compliant, JCAR may file an objection, to which the adopting agency can respond. If JCAR is not satisfied with the response, it can take various actions, including suspension of the rule. 5 ILCS 100/5-120 and 125 (2018).

### **DISCUSSION**

Governor JB Pritzker declared an emergency in Illinois on March 8, 2020, and extended the emergency declaration on April 1, 2020. IEPA notes that State agencies are temporarily reducing activities and workforce to core mission functions and essential operations. SR at 3. IEPA further notes that agencies are encouraged to work remotely where possible. IEPA argues that the Gubernatorial Disaster Proclamations gives the Board a mandate to ensure the effects of COVID-19 are mitigated and minimized. SR at 7.

IEPA argues that extending the renewal deadline for CCCDI, along with their plumbing licenses renewal requirements, will reduce the possibility of job loss during this pandemic. IEPA explains that those persons submitting a renewal application will first need adequate time to obtain a plumbing license renewal. If they cannot do so, there could be a gap where a CCCDI would lose CCCDI approval because they had not been able to renew their plumber’s licenses. *Id.* IEPA notes that over 2,500 CCCDI approvals have not yet been renewed. SR at 9.

For all these reasons, IEPA argues that an emergency exists and the Board's authority allows the Board to adopt the emergency rules. The Board agrees. CCCDIs play a significant role in protecting public health and welfare by helping to ensure that public water supplies are protected from connections to and contaminations by unsafe sources of water. Among other requirements that apply to their position, CCCDIs must be plumbers licensed by IPDH. In response to the Governor's emergency declaration, which has a dramatic effect on the operations of state government, IDPH extended the deadline to renew plumbers' licenses to October 30, 2020. Under the general rule, CCCDI approvals expire on June 30, 2020. As a result of IDPH's extension, it is not now possible for as many as 2,500 CCCDIs to renew their approval. Because they cannot obtain approval, the state's ability to perform these important inspections is sharply reduced. The reduction in the number of eligible CCCDIs poses the risk that cross connections will not be detected and will jeopardize public water supplies. While the Board is confident that the CCCDIs who have already renewed their approval for calendar year 2020 will perform conscientiously, it is not realistic to expect that they also can perform the work of 2,500 CCCDIs who cannot now renew their approval."

While emergency rulemaking by the Board is not unprecedented, it is not an ordinary occurrence. The Board rarely receives a request to adopt emergency rules. In some instances, the Board has been presented with sufficient evidence and argument to allow it to find that "a situation exists which reasonably constitutes a threat to the public interest, safety or welfare" within the meaning of Section 27(c) of the Act and Section 5-45 of the IAPA. In other instances, the Board has not, resulting in use of the regular rulemaking process to address the situation presented.

The Board adopted emergency rules to ameliorate public health and safety threats without first calling for and accepting public comments. These include rulemakings to facilitate disposal of non-hazardous waste in 20 "disaster area" counties impacted by the flooding of the Mississippi River and its tributaries. Emergency Rulemaking: Amendments to the Open-Burning Permit Rules, 35 Ill. Adm. Code 237, R93-15 (Aug. 20, 1993); Emergency Amendments to the Landfill Rules for On-Site Burial of Dead Animals in Flood-Disaster Counties: 35 Ill. Adm. Code 8-7.106, R93-25 (Sept. 23, 1993); RCRA Subtitle D Extension 35 Ill. Adm. Code 814 (Emergency Rule), R94-13 (May 5, 1994) (citing adoption of P.A. 88-540, eff. Apr.30, 1994). In each docket, the Board found that the situation qualified as an "emergency" for the affected counties within the meaning of the Act and IAPA.

In the instant request by IEPA, all 102 Illinois counties are under an emergency declaration. Section 27(c) of the Act specifically allows the Board to adopt emergency rules if the Governor declares an emergency. The Board further finds that a declared emergency is sufficient to find that failure to adopt these rules could reasonably constitute a threat to the public interest, safety, or welfare under Section 5-45(a) of the IAPA. The Board is further persuaded by IEPA's argument that failure to adopt the rule could impact the economy. The economy is impacted by the need to shelter in place, social distancing, and minimization of workforces throughout the State. Therefore, based on these factors, the Board finds that adoption of the emergency rule is necessary to address issues raised by the emergency declaration.

The Board notes that the 150-day duration of an emergency rule will expire before the extended deadline of October 30, 2020. The Board is considering proposing for first notice a rule at its next meeting. The Board invites comment on that issue by April 30.

### **CONCLUSION**

Governor J.B. Pritzker declared a state of emergency on March 9, 2020, and renewed that declaration on April 1, 2020. Because of the current state of emergency due to the pandemic caused by COVID 19, the Board agrees that an emergency exists and adopts the IEPA's proposed emergency rule.

### **ORDER**

The Board directs the Clerk to file the following as an emergency rule in the *Illinois Register*:

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

PART 604  
DESIGN, OPERATION AND MAINTENANCE CRITERIA

SUBPART A: GENERAL PROVISIONS

Section	
604.100	Purpose
604.105	General Requirements
604.110	Location
604.115	Usage
604.120	Piping Identification
604.125	Automatic Equipment
604.130	Operational Testing Equipment
604.135	Repair Work and Emergency Operation
604.140	Nitrification Action Plan
604.145	Exceptions for Community Water Supplies
604.150	Protection of Community Water Supply Structures
604.155	Electrical Controls and Standby Power
604.160	Safety
604.165	Monthly Operating Report
604.170	Security

SUBPART B: SOURCE DEVELOPMENT

Section	
604.200	General Requirements

604.205	Surface Water Quantity
604.210	Surface Water Quality
604.215	Surface Water Structures
604.220	Invasive Mussel Control
604.225	Reservoirs
604.230	Groundwater Quantity
604.235	Groundwater Quality
604.240	General Well Construction
604.245	Well Testing and Records
604.250	Aquifer Types and Construction Methods
604.255	Well Pumps, Discharge Piping and Appurtenances

#### SUBPART C: SOURCE WATER PROTECTION PLAN

Section	
604.300	Purpose
604.305	Source Water Protection Plan Requirement and Contents
604.310	Vision Statement
604.315	Source Water Assessment
604.320	Source Water Protection Plan Objectives
604.325	Action Plan
604.330	Submission
604.335	Agency Approval
604.340	Evaluation and Revision

#### SUBPART D: AERATION

Section	
604.400	General Requirements for Aeration
604.405	Forced or Induced Draft Aeration
604.410	Spray Aeration
604.415	Pressure Aeration
604.420	Packed Tower Aeration
604.425	Other Methods of Aeration

#### SUBPART E: CLARIFICATION

Section	
604.500	General Clarification Requirements
604.505	Coagulation
604.510	Flocculation
604.515	Sedimentation
604.520	Solids Contact Unit
604.525	Tube or Plate Settlers
604.530	Other High Rate Clarification Processes

## SUBPART F: FILTRATION

Section	
604.600	Filtration
604.605	Rapid Rate Gravity Filters
604.610	Rapid Rate Pressure Filters
604.615	Deep Bed Rapid Rate Gravity Filters
604.620	Biologically Active Filtration

## SUBPART G: DISINFECTION

Section	
604.700	Disinfection Requirement
604.705	Chlorination Equipment
604.710	Points of Application
604.715	Contact Time
604.720	Inactivation of Pathogens
604.725	Residual Chlorine
604.730	Continuous Chlorine Analyzers
604.735	Chlorinator Piping

## SUBPART H: SOFTENING

Section	
604.800	Lime or Lime-soda Process
604.805	Cation Exchange Process

## SUBPART I: STABILIZATION

Section	
604.900	General Stabilization Requirements
604.905	Carbon Dioxide Addition
604.910	Phosphates
604.915	Split Treatment

## SUBPART J: OTHER TREATMENT

Section	
604.1000	Presedimentation
604.1005	Anion Exchange
604.1010	Iron and Manganese Control
604.1015	Taste and Odor Control
604.1020	Powdered Activated Carbon

## SUBPART K: CHEMICAL APPLICATION

604.1100	General Chemical Application Requirements
604.1105	Feed Equipment and Chemical Storage
604.1110	Protective Equipment
604.1115	Chlorine Gas
604.1120	Acids and Caustics
604.1125	Chlorine Dioxide
604.1130	Sodium Chlorite
604.1135	Sodium Hypochlorite
604.1140	Ammonia
604.1145	Potassium Permanganate
604.1150	Fluoride

#### SUBPART L: PUMPING FACILITIES

604.1200	General
604.1205	Pumping Stations
604.1210	Pumps
604.1215	Booster Pumps
604.1220	Automatic and Remote-Controlled Stations
604.1225	Appurtenances

#### SUBPART M: STORAGE

604.1300	General Storage Requirements
604.1305	Overflow
604.1310	Access to Water Storage Structures
604.1315	Vents
604.1320	Level Controls
604.1325	Roof and Sidewalls
604.1330	Painting and Cathodic Protection
604.1335	Treatment Plant Storage
604.1340	Elevated Storage
604.1345	Hydropneumatic Storage
604.1350	Combination Pressure Tanks and Ground Storage

#### SUBPART N: DISTRIBUTION

604.1400	General Distribution System Requirements
604.1405	Installation of Water Mains
604.1410	Materials
604.1415	System Design
604.1420	Valves
604.1425	Hydrants
604.1430	Air Relief Valves
604.1435	Valve, Meter and Blow Off Chambers
604.1440	Sanitary Separation for Finished Water Mains

- 604.1445 Sanitary Separation for Raw Water Mains
- 604.1450 Surface Water Crossings
- 604.1455 Water Service Line
- 604.1460 Water Loading Stations

SUBPART O: CROSS CONNECTIONS

Section

- 604.1500 Cross Connections
- 604.1505 Cross Connection Control Program
- 604.1510 Cross Connection Control Device Inspectors
- 604.1515 Agency Approved Cross Connection Control Measures
- 604.1520 COVID-19 Emergency Provisions

EMERGENCY

604.TABLE A Steel Pipe

AUTHORITY: Implementing Section 14-19 and authorized by Section 27 of the Illinois Environmental Protection Act [415 ILCS 5].

SOURCE: Adopted in R18-17 at 43 Ill. Reg. 8064, effective July 26, 2019; emergency amendment in R20-20 at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days.

SUBPART O: CROSS CONNECTIONS

**Section 604.1520 COVID-19 Emergency Provisions**

**EMERGENCY**

Due to the public health emergency related to the COVID-19 outbreak, the CCCDI approval renewal application deadlines for 2020 pursuant to Section 604.1510(b)(2) are extended. For renewal year 2020, CCCDIs must-renew their CCCDI Approval between August 31 and October 30. An application for CCCDI renewal will be sent by the Agency or its designee and must be completed and returned by October 30, 2020.

(Source: Emergency rule added at 44 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_, for a maximum of 150 days)

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 16, 2020 by a vote of 4-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board