

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R 2020-20
EMERGENCY RULEMAKING FOR)	
CROSS CONNECTION CONTROL DEVICE)	EMERGENCY
INSPECTORS OF PUBLIC WATER SUPPLIES)	(Rulemaking - Water)
AT 35 ILL. ADM. CODE PART 604.1520)	

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a **NOTICE OF FILING** and **ILLINOIS EPA'S COMMENT ON BOARD ORDER** on behalf of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Petitioner,

BY: /s/ Christine M. Zeivel
Christine M. Zeivel

Dated: April 29, 2020

Christine M. Zeivel, #6298033
Division of Legal Counsel
Illinois Environmental Protection Agency
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THIS FILING IS SUBMITTED ELECTRONICALLY

SERVICE LIST

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ILLINOIS EPA’S COMMENT ON BOARD ORDER

NOW COMES the Illinois Environmental Protection Agency (hereafter “Illinois EPA”), by and through its counsel, and hereby files Illinois EPA’s comment on the Illinois Pollution Control Board (“Board”) Order and Opinion dated April 16, 2020 (hereafter “Board Order”).

1. On April 10, 2020, Illinois EPA filed an emergency rulemaking proposal to extend the certification renewal period for cross connection control device inspectors (hereafter “CCCDIs”) with the Board due to the state of emergency caused by COVID-19.

2. Illinois EPA’s Statement of Reasons in support of the proposed rulemaking cited Illinois Department of Public Health’s (hereafter “IDPH”) emergency rulemaking extending plumber licensing renewal deadlines. Since plumber licensure is necessary to CCCDI certification, Illinois EPA’s proposed rulemaking extended its deadlines by the same interval of time as IDPH’s deadline extension.

3. On April 16, 2020, the Board found that an emergency exists and adopted the emergency rule as proposed by the Agency, as follows:

“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.”

4. The Illinois Administrative Procedure Act (hereafter “IAPA”) limits emergency

rules to 150 days. Section 5-45 of the IAPA states: “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.” 5 ILCS 100/5-45 (2018).

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

6. IDPH’s recurring plumber renewal deadline is April 30th. 68 Ill. Admin. Code 750.400(b). Since plumbing licensure is necessary for CCCDI certification, Illinois EPA allows CCCDI renewals to occur annually between May 1st and June 30th. 35 Ill. Admin. Code 604.1510(b)(2). IDPH extended its 2020 deadline by 120 days to August 28th through its emergency rulemaking. 68 Ill. Admin. Code 750.1; 44 Ill. Reg. 6122 (April 17, 2020). Accordingly, Illinois EPA proposed extending its deadlines by 120 days, so that CCCDI renewals would occur between August 31st and October 30th. However, Section 604.1510(b)(2) contains a deadline window of sixty (60) days instead of a singular date like IDPH’s subject regulation, so the deadline window closes beyond the 150 days allowed for an emergency rule to be in effect.

7. Emergency rules are generally limited in availability and time by statute so that the notice and comment procedures afforded under general rulemaking procedures are not diluted or curtailed unnecessarily. *Senn Park Nursing Ctr. et al. v. Miller, Dir., Ill. Dept. Public Health*, 118 Ill. App. 3d 733 (1st Dist. 1983). In this case, by the time the Board were to engage and go through the IAPA’s general rulemaking process, the generally applicable deadlines in Section 604.1510(b)(2) will have likely passed, along with any purpose the notice and comment procedures affords.

8. The Illinois EPA appreciates the procedural dilemma of needing to extend a period

of time within the context of an emergency rulemaking. One possible solution could be to bifurcate the emergency rulemaking into two phases as follows:

Phase One – Modify the Board Order to adopt an emergency rule on May 1 extending the May 1 through June 30 renewal period to August 31st and September 28th (i.e. 150 days after May 1) – while noting the Board’s intention to adopt Phase Two so that the public will know that the September 28th deadline will be extended.

Proposed text:

“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 September 28. An application for CCCDI renewal will be sent by the Agency or its designee and must be completed and returned by September 28.”

Phase Two – Adopt an emergency rule on or after June 2 extending the September 28 deadline to October 30.

Proposed text:

“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.”

WHEREFORE, the Illinois EPA defers to the Board’s judgment on the necessity of a general rulemaking in the instant case and provides the above comments for the Board’s consideration.

Respectfully submitted,

Dated: April 29, 2020

Christine M. Zeivel, #6298033
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ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Petitioner,

BY: /s/ Christine M. Zeivel
Christine M. Zeivel

THIS FILING IS SUBMITTED ELECTRONICALLY

CERTIFICATE OF SERVICE

I, the undersigned, on affirmation state the following:

That I have served the attached **NOTICE OF FILING** and **ILLINOIS EPA'S COMMENT TO BOARD ORDER** by e-mail upon Don Brown at the e-mail address of don.brown@illinois.gov; upon Jason Boltz at the e-mail address of jason.boltz@illinois.gov; upon Renee' Snow at the e-mail address of renee.snow@illinois.gov; upon Virginia Yang at the e-mail address of virginia.yang@illinois.gov; and upon Matthew Dunn at the e-mail address of mdunn@atg.state.il.us.

That my e-mail address is Christine.Zeivel@Illinois.gov.

That the number of pages in the e-mail transmission is seven (7).

That the e-mail transmission took place before 4:30 p.m. on the date of April 29, 2020.

/s/ Christine M. Zeivel
April 29, 2020