

ILLINOIS POLLUTION CONTROL BOARD

April 17, 2003

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM. CODE) R03-21
602.105, 602.106, 602.108, and 602.115) (Rulemaking - Public Water Supply)

ORDER OF THE BOARD (by L.P. Padovan):

On April 7, 2003, the Board received a proposal from the Illinois Environmental Protection Agency (IEPA) to amend the Board's permitting rules for Illinois public water supplies (PWS) at 35 Ill. Adm. Code 602. The proposal would allow IEPA to continue issuing permits to PWS that do not meet the federal radionuclide standard for drinking water, but only if the PWS is bound by order or agreement to a compliance schedule for meeting the federal standard. The current exemption in Part 602 that allows such permit issuance "sunset" December 8, 2003. Today the Board accepts the proposal for hearing.

Under Section 17.6 of the Environmental Protection Act (Act) (415 ILCS 5/17.6 (2002)), Illinois standards for radionuclides (including radium-226, radium-228, uranium, and gross alpha particle activity) in PWS must be the same as the federal drinking water standards known as Maximum Contaminant Levels (MCLs). MCLs are adopted by the United States Environmental Protection Agency (USEPA) to implement the federal Safe Drinking Water Act. Those standards, as codified in Board rules, are 5 pico curies per liter (pCi/L) for combined radium (radium-226 and radium-228) and 15 pCi/L for gross alpha particle activity. Compliance with these standards is required effective December 8, 2003.

IEPA explains that its proposed amendments to Part 602 would not exempt PWS from the final radionuclide standard, which as noted takes effect December 8, 2003. Rather, the amendments would continue the existing State exemption that keeps certain PWS from being placed on "restricted status" (*i.e.*, an Illinois-only list of PWS banned from receiving construction permits). Statement at 1-2.¹ IEPA states that its proposal:

will allow those PWS [subject to an enforceable compliance schedule by order or agreement] to expand their facilities while installing treatment for radionuclides or otherwise achieving compliance with the radionuclide standard. Unless the Board amends these exemptions to extend beyond the December 8, 2003 effective date of the final radionuclide rule, all PWS whose compliance schedules extend beyond that date would be required to seek relief in the form of individual variances from the Board in order to receive Illinois EPA permits for expansion.

The variance process is costly not only for the Board and Illinois EPA, but also for the regulated community. *** Because only the PWS who have entered into CCAs [Compliance Commitment Agreements] or consent orders requiring date-

¹ IEPA's Statement of Reasons within its rulemaking proposal is cited as "Statement at _."

certain compliance with the radionuclide standard will qualify for these exemptions, and the Illinois EPA will continue to enforce the federal radionuclide standards, the State of Illinois will not be subject to loss of its primary enforcement responsibility under the Safe Drinking Water Act.

Continuing the exemption from restricted status for PWS that are seeking compliance will have little or no impact on the safety of the drinking water that is provided by these PWS. Statement at 8-9.

By way of background, IEPA under current Board rules cannot issue a construction permit to a PWS that is out of compliance with MCLs. Board rules require that such a PWS be placed on a restricted status list by IEPA. *See* 35 Ill. Adm. Code 602.105(a), 602.106(a), (b). Once on restricted status, the non-compliant PWS is subject to the construction permit ban and accordingly cannot receive a permit to, for example, add service connections, until the PWS complies with the MCL.

A non-compliant PWS could receive a construction permit only if it first demonstrated to the Board that it was entitled to a variance (415 ILCS 5/35-38 (2002)) from the restricted status rule. IEPA notes that from 1977 to 1997, the Board issued 134 such variances for 83 PWS exceeding the existing federal radionuclide MCL, which USEPA established in 1976. Statement at 3, 8. The relief provided by variance was from the construction permit ban, not from the drinking water standard.

The Board in 1997 adopted a limited regulatory exemption that provided the same relief without requiring a case-by-case variance determination. *See Amendments to 35 Ill. Adm. Code Subtitle F*, R96-18 (May 1, 1997). The regulatory exemption (35 Ill. Adm. Code 602.105(d), 602.106(d)) has been available to those PWS that did not meet the 1976 MCL but did meet USEPA's 1991 interim radionuclide standard. As IEPA explains, the Board was "prompted to provide such relief because of unusual delays in promulgating" the final federal radionuclide standard. Statement at 2. As with variance relief, PWS availing themselves of the regulatory exemption were not exempt from the 1976 drinking water MCL, but rather from the State's construction permit ban. The Board noted at the time it adopted the exemption that almost no PWS in Illinois exceeded the 1991 radionuclide standard proposed by USEPA. R96-18, slip op. at 6-7. The regulatory exemption from restricted status was written to expire on the effective date of the final federal radionuclide standard.

It was not until December 7, 2000, that USEPA adopted the final radionuclide standard. USEPA retained the existing 1976 MCL of 5 pCi/L for the combined radium MCL (radium-226 and radium-228), rejecting its 1991 proposed standard of 20 pCi/L for each of the two radium isotopes. USEPA adopted a final MCL for gross alpha of 15pCi/L. The effective date for these final drinking water standards is December 8, 2003. Statement at 2-4. Therefore, the 1997 regulatory exemption from restricted status expires on the same date, December 8, 2003.

The Board adopted USEPA's final drinking water standards for radionuclides on October 4, 2001, bringing into Board rule the December 8, 2003 compliance date for all Illinois PWS. *See SDWA Update: USEPA Amendments (July 1, 2000 through December 31, 2000)*,

R01-20 (Oct. 4, 2001). The drinking water standards are at 35 Ill. Adm. Code 611.330. The Board also adopted rules setting forth special requirements for any petitions for variance or adjusted standard from the radionuclide MCL. *See* 35 Ill. Adm. Code 611.130.

Under IEPA's proposed amendments, a PWS not meeting the final radionuclide standard could continue to avoid restricted status *only if* the PWS is bound to comply with the final standard under either a Compliance Commitment Agreement (CCA) with IEPA or an enforceable court order. Statement at 5-6. Under Section 31 of the Act (415 ILCS 5/31 (2002)), a CCA is designed to bring an alleged violator into compliance without IEPA referring the matter to the Attorney General's Office or a State's Attorney for enforcement.

IEPA explains that in 2001, it began contacting the 113 Illinois PWS then exceeding the 5 pCi/L combined radium MCL and the 15 pCi/L gross alpha MCL. IEPA anticipates that approximately 50 to 60 PWS may fail to meet the December 8, 2003 deadline and be subject to the pre-enforcement processes of Section 31 of the Act. Statement at 4-5. IEPA maintains that those PWS meeting compliance dates of CCAs or court orders should be able to avoid restricted status without having to individually petition the Board for variance relief, expending PWS, Board, and IEPA resources. *Id.* at 5-7.

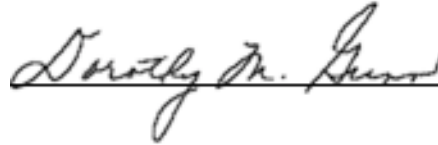
IEPA asks the Board to adopt the proposed amendments before December 8, 2003, when the existing regulatory exemption from restricted status expires. Statement at 1. As proposed, the amendments would take effect on December 8, 2003. IEPA explains that its proposed rule would not provide relief from the drinking water standards for combined radium, gross alpha particle activity, or uranium, but instead from the construction permit ban, allowing needed facility expansions to proceed. *Id.* at 1-2, 6.

In this rulemaking proposal, IEPA also requests that the Board adopt amendments that would require each person signing a construction permit application for a PWS to certify that the information in the application is complete and accurate and that the text has not been altered from IEPA's permit application form or template. Statement at 7, 9. IEPA also proposes to update references in the Board's rules to IEPA technical and design criteria for PWS. *Id.* at 8-9.

IEPA's rulemaking proposal satisfies the content requirements of 35 Ill. Adm. Code 102.202. The Board accepts the proposal for hearing and directs the hearing officer assigned to proceed expeditiously under the rulemaking provisions of the Act (415 ILCS 5/27, 28 (2002)) and the Board's procedural rules (35 Ill. Adm. Code 102).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 17, 2003, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board