ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PUBLIC WATER SUPPLIES:) No. R15-22	
PROPOSED AMENDMENTS TO 35) Rulemaking-Wat	er
ILL. ADM. CODE PARTS 601,)	
602 AND 603)	

REPORT OF THE PROCEEDINGS had at the hearing on a motion of the above-entitled cause before the Honorable J. MARK POWELL, Hearing Officer, Illinois Pollution Control Board, 100 West Randolph Street, 9-031, Chicago, Illinois, on the 2nd day of July, 2015, at the hour of 11:00 a.m.

		Page 2
1	APPEARANCES:	
2	MR. J. MARK POWELL, Hearing Officer MR. GERALD KEENAN	
3	MS. CARRIE ZALEWSKI MS. JENNIFER BURKE	
4	MR. GERALD O'LEARY MR. ANAND RAO	
5	MS. ALISA LIU	
6	ILLINOIS ENVIRONMENTAL PROTECTION AGENCY BY: MS. JOANNE OLSON	
7	1021 North Grand Avenue East P.O. Box 19276	
8	Springfield, Illinois 62794 (217) 524-3306	
9		
10	Appeared on behalf of the Illinois Environmental Protection Agency;	
11	ALSO PRESENT: MR. W. DAVID MCMILLAN MR. DAVID COOK	
12		
13	REPORTED BY:	
14	Steven J. Brickey, CSR CSR License No. 084-004675	
15	CSR LICENSE NO. 084-004873	
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1 HEARING OFFICER POWELL: 2 morning and welcome to the Illinois Pollution 3 Control Board hearing. My name is Mark Powell and I am the Hearing Officer for this rulemaking 4 5 proceeding entitled Public Water Supplies: Proposed Amendments to 35 Ill. Adm. Code Parts 6 7 601, 602 and 603. The Board docket for the 8 9 rulemaking is R15-22. Also present today from the 10 Board are to my immediate right Jerry Keenan, the lead Board Member for this rulemaking; to my 11 12 further right is Board Member Carrie Zalewski; and 13 to my left Board Member Jennifer Burke as well as 14 Board Member Jerry O'Leary. Also present are 15 Anand Rao to my immediate left and Alisa Liu to my further left of the Board's technical staff and I 16 17 also want to point out also present is Jason 18 James, the attorney assistant to Board Member 19 Keenan. Please give us a wave back there. 20 As background, the Illinois 2.1 Environmental Protection Agency filed this 22 rulemaking proposal with the Board on May 8th, 23 2015. By order of May 21st, 2015, the Board 24 accepted the proposal for hearing.

A Hearing Officer order dated May 26th, 2015, scheduled this hearing, the first one in this rulemaking. That order also set a deadline of June 2nd, 2015, to pre-file testimony for this hearing. The Board on May 28th, 2015, received pre-filed testimony on behalf of IEPA's proposal by Mr. David McMillan and Mr. David Cook. No other participant has pre-filed testimony for this hearing.

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I entered another Hearing

Officer order on June 25th, 2015, posing questions

by the Board and staff for IEPA's witnesses which

will be taken up today. No other participant has

pre-filed any questions for IEPA for this hearing.

Also, I want to make sure everyone knows that the Agency helpfully filed yesterday afternoon responses, written responses, to the Board's pre-filed questions including several exhibits. I anticipate the Agency will move to have the questions and exhibits entered -- excuse me -- the responses and exhibits entered into the record today. We will take that up when we turn to IEPA's testimony.

In the meantime, there are

copies -- a couple of copies of IEPA's responses and exhibits on the table to my far left over there for anyone who would like one.

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If any participant needs some time to review the responses before we turn to IEPA's testimony, please give me a signal now and we can go off the record and allow time for such review. Seeing none, there were a couple other preliminary matters before we take up IEPA's testimony.

First, I want to note for the record that there is a sheet inside the door on which anyone who did not pre-file testimony can indicate that they would like to testify today.

Also, there is a sheet inside the door where anyone can indicate that they would like to offer a comment here today. Please note that is a separate sheet from the sheet for testimony.

I'd like to ask Tim Fox if he would let us know if there are any names on any list?

MR. FOX: Both the signup to testify and the signup to offer comment are blank. No one

1 has signed in.

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2 HEARING OFFICER POWELL: Thank you.

This proceeding is governed by the Board's procedural rules. All information that is relevant and that is not repetitious or privileged will be admitted into the record.

Please note that any questions posed today by the Board members or staff are intended solely to assist in developing a clear and complete record for the Board's decision and do not reflect any prejudgment or bias on the proposal. We will begin this hearing with the pre-filed testimony of IEPA's witnesses. We will enter that pre-filed testimony into the record as if read.

We will then allow an opportunity for Ms. Olson to move IEPA's responses -- written responses to the Board's pre-filed questions into the record. Next, we will have the witnesses sworn in and allow them to give a brief summary of the pre-filed testimony if either wishes to offer one. After that, we will turn to questions regarding those witness's testimony.

Anyone may ask questions of IEPA's witnesses and any participants present in the audience, I don't see any at this point, but any such participants will be given first opportunity to pose questions.

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The Board or staff will then ask any follow-up questions based on IEPA's written responses filed yesterday. Please note that the Board may raise additional follow-up questions at the second hearing in this docket scheduled for August 17th, 2015.

After the testimony of the questions for IEPA's witnesses, we will allow anyone else to testify and as time allows the Board may receive public comments on the proposal. Towards the conclusion of today's hearing, there will be an opportunity for anyone to offer testimony on the Board's request that the Department of Commerce and Economic Opportunity, or DCEO, perform an Economic Impact Study on this proposal.

For the court reporter transcribing today's proceeding, please speak clearly and avoid speaking at the same time as

Page 8 1 another person so we can help produce a clear 2 transcript. Are there any questions about our 3 order of proceeding today? 4 Seeing none, let's turn to 5 IEPA's pre-filed testimony. Absent any objections, that pre-filed testimony will be 6 7 entered into the record as if read as provided in the May 26th, 2015, Hearing Officer order. First, 8 9 is there any objection to entering as if read the pre-filed testimony of David McMillan? 10 11 MS. OLSON: No objection, Hearing 12 Officer, but I would like to note that I have 13 copies of both that are marked as exhibits for 14 you. 15 HEARING OFFICER POWELL: Thank you. 16 Seeing none, is that marked as Hearing Exhibit 1? 17 MS. OLSON: One and two and I noted 18 IEPA was the one who put them into the record. 19 HEARING OFFICER POWELL: Thank you. 2.0 So I've been handed the testimony of David 2.1 McMillan. It has been marked as Hearing Exhibit 1

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and entered into the record as if read.

Page 9 1 (Document marked as Hearing 2 Exhibit No. 1 for 3 identification.) 4 HEARING OFFICER POWELL: Second, is 5 there any objection to entering as if read the pre-filed testimony of David Cook? Seeing none, 6 7 I'm marking this document as Hearing Exhibit 2 and 8 entering it into the record as if read. 9 (Document marked as Hearing 10 Exhibit No. 2 for 11 identification.) 12 HEARING OFFICER POWELL: Next, does 13 the Agency have a motion to admit into the record 14 the written responses to the Board's pre-filed 15 questions? 16 MS. OLSON: Yes, the Agency prepared 17 responses to the Board's questions. Attached to 18 these responses are Exhibit's A, B and C. I don't 19 have copies for every member of the Board, but I 20 did pre-file it yesterday. So I move that it be admitted into the record. 2.1 22 HEARING OFFICER POWELL: Is there 23 any objection? Seeing none, that will be admitted 24 into the record as -- the response will be

Page 10 1 admitted into the record as Exhibit 3, Hearing 2 Exhibit 3. Thank you. 3 (Document marked as Hearing Exhibit No. 3 for 4 5 identification.) 6 HEARING OFFICER POWELL: Okay. 7 Olson, if you would, please take a moment to 8 introduce yourself and IEPA's witnesses just for the record and we can swear them in and begin. 9 10 MS. OLSON: My name is Joanne Olson. 11 I'm assistant counsel at Illinois EPA and I helped 12 to prepare this rulemaking proceeding. 13 Illinois EPA is proposing to amend Part 601, 602 14 and 603. The last amendments to this portion of 15 the Board's rules were back in 2003, but the 16 Agency believes I think substantively these rules 17 have not been overhauled for quite some time. 18 The Agency is preparing to 19 overhaul the public water supply rules and this is 20 the first step in our process and the main focus 2.1 of this rulemaking has been the permitting rules

In Part 601, we are updating the incorporation by references and definitions and in

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in 602.

Page 11 1 part 603 we are updating the responsible personnel 2 rules to match the recent statutory amendments to 3 the Public Water Supply Operations Act. I have with me two Agency witnesses who I will let 4 5 introduce themselves. 6 MR. MCMILLAN: Dave McMillan, I'm 7 the Division Manager of the Division of Public 8 Water Supplies in the Bureau of Water at the Illinois EPA. I thank the Board for the 9 10 opportunity to testify today. 11 MR. COOK: David Cook, Illinois EPA 12 Division of Public Water Supplies Permit Section. 13 Thank you for the opportunity to testify. HEARING OFFICER POWELL: Okay. 14 15 Thank you. With that, would the court reporter 16 please swear in the two witnesses. 17 WHEREUPON:

DAVID COOK and DAVID MCMILLAN called as witnesses herein, having been first duly sworn, deposeth and saith as follows:

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HEARING OFFICER POWELL: Okay. We can now move on to questions for the witnesses. I don't see any participants here today, the other participants, but just again for the record if you

Page 12 1 are a participant here today and have a question, 2 please give me a signal. Before asking your first 3 question, please for the record state your name 4 and any organization you're representing here 5 today. 6 Seeing none, we will turn to the 7 Board's follow-up questions for the panel based on 8 the written responses filed yesterday. 9 Does any Board member have a question for these witnesses? Seeing none, does 10 Board staff have any questions? 11 12 MR. RAO: Yes, we have a few. 13 Should I start? 14 HEARING OFFICER POWELL: Sure. 15 Please. 16 MR. RAO: Starting with guestion 17 number one. Does the Agency have a timeframe for 18 filing the design operation and maintenance rules 19 and also can the Agency comment on whether the 20 Agency has any plans to revise the Agency rules 2.1 upon the adoption of the proposal before the 22 Board? 23 MR. MCMILLAN: While we do not have

a definite timeframe at this point for the

1 operation/maintenance criteria, we hope to supply 2 something to the Board next year in 2016. 3 Currently, we're in the process of revising those 4 regulations very much similar to what we've done 5 here for 601, 602, 603. Once that effort is 6 completed, then, yes, our intention is that Agency rules will be reviewed and most of them will be 7 8 repealed. 9 Thank you. MR. RAO: The next 10 follow up is on question number seven cross-connections. Could you please comment on 11 12 whether the proposed definition of 13 cross-connection has any implications on the scope 14 of the cross-connection provisions under Section 15 607.104 since the existing rules under Part 607 do not refer to the direct and indirect 16 17 cross-connection, those are the definitions that 18 you added, that does it have -- does it make any 19 changes to how you apply the rules under 607? 20 MR. MCMILLAN: Yes, the -- it -- in

MR. MCMILLAN: Yes, the -- it -- in answer to your question, it does not directly have an impact on 607. However, we did bring this direct and indirect cross-connection over with the intention that in the future it will have

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1 implications to the revisions that we'll be 2 providing next year. So if -- if the Board would 3 prefer us not to add those definitions at this time, we can hold off until we do the additional 4 5 revisions next year. Yeah, those definitions are 6 currently in 35 Ill. Adm. Code Part 651. 7 MR. RAO: Okay. Thank you for the 8 clarification. The next follow up is on question 9 10 dealing with the standard of issuance. 10 In response to the Board's question about whether all the design criteria 11 12 listed -- listed under Section 602.105(a)(2) 13 applies to an applicant, the Agency responded that 14 community water supply needs to confirm with all 15 of the standards listed, if applicable. 16 proposed, the language under Section 17 602.105(a)(2)(c), it ends with an or. Should that or be replaced with an and? 18 19 MR. COOK: The intention of this 20 section was for (a)(2)(d) to be an or, but 2.1 (a) (2) (a), (b) and (c) would be and. 22 MR. RAO: Okay. Also, would it be

acceptable to the Agency if we add "if applicable"

in the beginning part of the section based on your

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Page 15 1 response? 2 MR. COOK: Yes, we don't have any 3 objection to that. 4 MR. RAO: Okay. 5 MS. LIU: Would you like to 6 repropose some wording for that so it explicitly 7 states that? MR. COOK: Yes. 8 9 MR. RAO: Thank you. The next one 10 is under Section 602.106, question number 12(b). 11 Your response under question 12(b) you had 12 provided a web link to the Restricted Status List 13 on your website and when I tried using that it gave me an error page. So --14 15 MR. MCMILLAN: We've been having 16 Internet issues. 17 MR. RAO: Okay. 18 MR. MCMILLAN: Many of our 19 applications right now were -- seem to be 2.0 unstable. 2.1 MR. RAO: So sometime in the future 22 that will be fixed? 23 MR. MCMILLAN: It could be fixed 24 right now. I'm not sure.

Page 16 1 MR. RAO: Okay. 2 MS. OLSON: Can I ask you a 3 question? 4 MR. RAO: Mm-hmm. 5 MS. OLSON: Which browser did you Because I find if I use Chrome our Internet 6 7 pages don't work very well, but if I use the other 8 browser, it works a lot better. 9 MR. RAO: See, I have Internet Explorer 10, I think. 10 11 MS. OLSON: Okay. 12 MR. RAO: And from what I've heard 13 from our staff members, they are all on 8 and some 14 of the pages work on 8. So, you know --MR. MCMILLAN: If you -- if you 15 16 continue to have issues with that, please let us 17 know. 18 MR. RAO: Okay. 19 MR. MCMILLAN: Because one of the 20 primary programs we use is the Drinking Water 2.1 Watch Program for community water supplies and 22 I've got two or three responses that it has been 23 up and down. So I know we're having a stability 24 issue on the website.

MR. RAO: Okay.

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MR. MCMILLAN: So we will check that, though, and see when we get back. Thank you.

MR. RAO: Thank you. I had the issue under the Critical Review List also. Go ahead.

MS. LIU: Following up on the same topic, the Agency has proposed just having the review list on its web page and the Board had asked whether or not we could continue to do it in The Environmental Register. As far as the web page as listings come and go, is there any sort of way to archive that and would the archive be available through the Agency website as well so you would know when a facility was on the list and when it was off if you ever wanted to check historically what its performance was?

MR. MCMILLAN: We can -- we can evaluate that. I can't tell you off the top of my head, but I believe that all of those lists were essentially kept in place. However, I do know that our Agency has been trying to move towards only keeping current data on there. So I can

discuss with our IT department to see what the best option is for that and we can get back to the Board on that.

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MS. LIU: Does the current page have a date on it to show when it was last updated so people know how current it is?

MR. MCMILLAN: It would -- I think it would be in the title of the -- of the listing very much similar to any other reporting that is done on the website. It would be, you know, the March 2015 Critical Review List or Restricted Status List. So, you know, when you clicked on the link, it would give you an indication of what that list was for, but, again, I don't know the status if they had an intention to take the old list off or how they were going to post them.

Yeah, we just went through a major web redesign.

MS. LIU: If it was maintained in The Environmental Register, would you agree that would be a form of archiving it where the website might not do that?

MR. MCMILLAN: That's a very good point.

MS. LIU: Thank you.

MR. RAO: When we pre-filed these questions, I tried going to those lists on your website and the dates were, I think, somewhere around 2011 or something like that. So I'm assuming you don't have a requirement right now to update it as frequently as you propose to in these rules. So assuming in the future it will be updated on a quarterly basis or whatever?

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MR. MCMILLAN: Correct.

MR. RAO: Okay. My next follow up is on question number 14. Could the Agency please clarify whether it considers violations of minimum pressure in portions of the distribution system, duplicate unit requirement or a failure to provide emergency power source as systems approaching the point of violating the Board regulations of the Act or do you consider those items already violating the Board regulations of that?

MR. COOK: With respect to pressure, the minimum PSI is 20 PSI and that -- if it's a violation in a portion of the system, it wouldn't affect possibly the entire system and with respect to the duplicate units and the emergency power the systems are still able to function properly. So

our position has been that we don't want to
completely deny all permits even for just a small
group.

MR. RAO: I just wanted to clarify

the triggers that you have right now for the Critical Review List are not violations of the Board's regulations and act? It's --

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MR. COOK: It's violations of Agency standards, yes.

MR. RAO: Right. If it is already a violation, then it should be on the Restricted Status List, right, not critical status? Because your response clarifies that critical status is something you are dealing with approaching a violation, not a violation. So I just wanted to make sure the triggers you use are not violations, but something approaching a violation of a Board regulation. If you can take a look at it and get back to us, that's fine.

MS. OLSON: Can I ask a follow up?

MR. RAO: Yes.

MS. OLSON: Do you know whether or not there is a pressure requirement in the Board's rules?

Page 21 1 MR. COOK: No, it's in the Agency's 2 rules. 3 MS. OLSON: So then the duplicate 4 unit requirement, is that in the Board's rules or 5 the Agency's rules? 6 MR. COOK: That's also in the 7 Agency's rules. 8 MS. OLSON: So as it's currently drafted, these would not be violations of Board 9 rules, is that right? 10 11 MR. COOK: Correct. 12 MS. OLSON: Does that help? MR. RAO: No. But they are 13 14 violations of the Agency's rules, are these 15 something that you're planning to propose to the Board under Part 604? 16 17 MR. COOK: If a system was in 18 violation of pressure at one pressure zone, that 19 pressure zone should not be allowed to expand, but 20 the system may be very large and have multiple 2.1 pressure zones where that high pressure zone is 22 not causing -- an expansion to another part of the system would not have an effect on the violated 23 24 area. So, in that case, we would issue the

1 permit.

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MS. OLSON: Just to clarify, if we were to put these -- these pressure requirements and unit requirements into Part 604 and then adopt them as a Board rule, if you violate the duplicate unit requirement you'd be in violation of the Board rules so you'd go on the Restricted Status List, is that right?

MR. COOK: Correct.

MS. OLSON: So when we make amendments to Part 604, when we propose Part 604 we'd have to go back and look at critical review and restricted status?

MR. COOK: Yes.

MR. RAO: Either you can do that or if you want to take a look at it now and propose triggers that will not have implications on violating the Board's rules, that would be acceptable also.

MS. OLSON: Thanks. We'll do that.

MR. RAO: The next follow up is on question 27. In response to our pre-filed question on Subsection J, you had indicated that the language in Subsection J is based on a Board

1 regulation under Section 602.110(a)(3). While we 2 recognize that language is in the existing rule, 3 will you be able to comment on how the Agency 4 interprets that section or implements that rule 5 and whether the Agency believes that the language proposed under Subsection J contemplates algicide 6 7 application to exceed water quality standards? 8 MR. COOK: I think we probably need 9 to talk to our water pollution control 10 counterparts regarding this issue. What we tried to do there was reflect what was actually in -- in 11 12 the previous Board regulations. So that was not a 13 change that we added this time. 14 MR. RAO: I appreciate it if you 15 could talk to your water pollution folks and give us a clarification. I realize it is an existing 16 17 Board rule, but when I saw that provision I 18 thought we are saying you can exceed water quality 19 standards with algicide application, at least it 20 seems like that. I just want to make sure how the 2.1 Agency is implementing that approach. 22 MS. OLSON: We'll get back to you. 23 MR. RAO: Thank you. The next

follow up is on question 28. Question number

1 28(b) we had asked the Agency how the Agency 2 defines high health risk for purposes of this 3 section and you responded that the basis for high health risk is found in Section 611.350(c)(2). 4 5 Would it be acceptable to the Agency if a cross-reference to that section is added to the 6 7 proposed section under Section 602.410(b)? 8 MR. MCMILLAN: Yeah, we can -- we 9 can do that. 10 MR. RAO: All right. That would be 11 helpful because if JCAR asks us a question, we can 12 always point to the 611 rule. That's all I have. 13 Thank you very much. 14 HEARING OFFICER POWELL: Does any 15 other Board staff have questions? 16 MS. LIU: No. 17 HEARING OFFICER POWELL: I have one 18 follow-up question relating to the response to 19 question 20. This has to do with the engineer's 20 report and in a question about that we asked 2.1 whether certain types of construction activities 22 would always require a construction permit 23 application included in the engineer's report and

the response says no and essentially says the

Agency proposed language allows discretion on a project by project basis and I was just wondering if you could comment on whether the Agency has in mind any criteria or standards for the exercise of that discretion and, if not, does the Agency -- why does the Agency feel that it's not necessary?

MR. COOK: Most engineering reports are submitted as part of a loan application. We feel it's necessary to also request those as part of the larger projects unless we have available information. For example, we've included language to say we may request a report to include but not limited to the construction of a new water supply and new source location or a new water treatment plant process.

If it involves a new source location that doesn't currently have existing wells, if it involves a new treatment plant process that we're not familiar with, those are some examples where we would request an engineering report.

HEARING OFFICER POWELL: Thank you.

Just a quick follow up.

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MR. COOK: Sure.

1 HEARING OFFICER POWELL: In the 2 Agency's view then, would a requirement to submit 3 an engineering report, would that be appealable to the Board under Section 40 of the Environmental 4 Protection Act? 5 6 MS. OLSON: I can give you an answer 7 if that's okay. 8 HEARING OFFICER POWELL: 9 MS. OLSON: My -- my feeling would 10 be it would not be directly appealable. It would 11 be appealable probably as of the permitting 12 decision at the end, but if the Board were to feel 13 strongly to put some language in here that makes 14 it appealable I think that would clarify that issue because right now there is nothing in here 15 16 that says it's appealable. My intuition would be 17 that it would be appealable at the end of the 18 process. However, if there is language in here 19 saying otherwise, it would make it clear that it 20 is directly appealable. 2.1 HEARING OFFICER POWELL: Okav. 22 Thank you. Just for the record, does anyone else 23 have any questions for these witnesses? Seeing

none and, again, just for the record, is there

anyone else who wishes to testify or offer comment today?

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Okay. Seeing none, we can move fairly quickly to adjournment with a couple of matters. Moving for a quick moment to the Economic Impact Study issue. Since 1998, Section 27(b) of the Environmental Protection Act has required the Board to request that the department now known as the Department of Commerce and Economic Opportunity conduct an Economic Impact Study of proposed rules before the Board adopts them.

The Board then must make either the Economic Impact Study or the department's explanation for not conducting one available to the public at least 20 days before public hearing. In a letter dated May 28th, 2015, the Board's Chairman Dr. Deanna Glosser requested that the department conduct an Economic Impact Study of this proposal.

The Board did specifically request a response no later than July 10th, 2015, a date that has, of course, not yet passed, but the Board has not yet to date received any

response from DCEO to this request.

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For the record, is there anyone who would like to testify regarding the request from the Board to DCEO? Seeing none, we can move to adjourn after a couple of quick announcements.

The second hearing in this docket has been scheduled to take place Monday, August 17th, 2015, in Springfield with a deadline of July 27th, 2015, to pre-file any testimony and a deadline of August 10th, 2015, to pre-file questions based upon that testimony.

The Board expects to receive the transcript of this hearing on or before July 15th, 2015. Very soon after the Board receives the transcript, it will be available on the Board's website at www.ipcb.state.il.us under this Docket Number R15-22. Anyone may file written public comments in this rulemaking with the clerk of the Board. Comments may be filed electronically through the Board's clerk's office online or COOL. Any questions about electronic filing or COOL should be directed to the clerk's office.

Filings with the Board, whether paper or electronic, must also be served on the

Hearing Officer and those persons on the service list. Before filing, please check with the Board's clerk to make sure that you have the most recent version of the service list. If anyone has any questions about the procedural aspects of this rulemaking, my contact information is posted on the Board's web page.

Are there any other matters that need to be addressed at this time? Seeing none, I would like to thank everyone for participating today and this hearing is adjourned.

MS. OLSON: Thank you.

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    STATE OF ILLINOIS
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    COUNTY OF COOK
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           I, Steven Brickey, Certified Shorthand
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    Reporter, do hereby certify that I reported in
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    shorthand the proceedings had at the trial
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          Witness my official signature in and for
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