

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PUBLIC WATER SUPPLIES:)
PROPOSED NEW 35 ILL. ADM.) No. R18-17
CODE 604 AND AMENDMENTS TO)
35 ILL. ADM. CODE PARTS)
601, 602, 607 AND 611)
)

REPORT OF THE PROCEEDINGS had at the
hearing on a motion of the above-entitled cause
before the Honorable TIMOTHY FOX, Hearing Officer,
Illinois Pollution Control Board, 100 West
Randolph Street, Chicago, Illinois, on the 16th
day of November, 2017, at the hour of 9:07 a.m.

1 A P P E A R A N C E S:

2 SPRINGFIELD CITY, WATER, LIGHT AND
POWER

3 BY: MS. DEBORAH J. WILLIAMS
800 East Monroe
4 Springfield, Illinois 62757
(217) 789-2116,
5 deborah.williams@cwlp.com

6 Appeared on behalf of Springfield City,
Water, Light & Power;

7 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

8 BY: MS. JOANN OLSON
MR. REX GRADELESS
9 1021 North Grand Avenue East
P.O. Box 19276
10 Springfield, Illinois 62794
(217) 524-3306
11 joanne.olson@illinois.gov
rex.gradeless@illinois.gov

12 Appeared on behalf of the Illinois
13 Environmental Protection Agency;

14 ALSO PRESENT: MR. DAVE MCMILLAN
MR. DAVID COOK
15 MR. RICK COBB
MR. STEVEN JOHNSON
16 MR. JUSTIN DEWITT
MR. TED MECKES
17 MR. MICHAEL CURRY

18 IPCB BOARD: MR. TIMOTHY FOX
MS. BRENDA CARTER
19 MS. CARRIE ZALEWSKI
MS. CYNTHIA SANTOS
20 MR. ANAND RAO

21
22 REPORTED BY:

23 Steven J. Brickey, CSR
CSR License No. 084-004675
24

1 HEARING OFFICER FOX: Good morning
2 and welcome to this Illinois Pollution Control
3 Board hearing. My name is Tim Fox and I am the
4 Hearing Officer for this rulemaking, which is
5 entitled Public Water Supplies: Proposed New 35
6 Ill. Adm. Code 604 and Amendments to 35 Ill. Adm.
7 Code Parts 601, 602, 607 and 611. The board
8 docket assigned to this rulemaking is R18-17. I
9 am stating the obvious I know, but you are surely
10 aware that the board is conducting this hearing
11 under Section 101.600 and 102.114 of its
12 procedural rules as a video conference hearing.

13 The board thanks you for your
14 help in taking advantage of the economies and the
15 efficiencies that result from the use of this
16 technology and we appreciate your flexibility in
17 terms of moving into the camera as necessary to
18 pose questions or respond to questions. While
19 that may extend us a moment or two over the long
20 run, I think this is a very helpful way to conduct
21 our hearings and I appreciate your flexibility in
22 working with the board and the board staff in
23 doing that.

24 I want to, first of all,

1 identify the folks that we see here on the screen
2 from Springfield. On the left, I see Board Member
3 Brenda Carter who is one of the two board
4 members -- lead board members assigned to this.
5 At our right is Board Member Carrie Zalewski and
6 at the end of the table from the board's technical
7 unit is Anand Rao.

8 I want generally to cover some
9 of the ground rules. This hearing is governed by
10 the board's procedural rules and under Section
11 104.426 of those rules all information that is
12 relevant and is not repetitive or privileged will
13 be admitted into the record. Please bear in mind
14 as always that any questions today that are posed
15 by the board's staff or the board members are only
16 intended to help develop a clear and complete
17 record and do not reflect any prejudgment of the
18 proposal, any of the testimony or any of the
19 questions and responses that are offered.

20 Particularly in this video
21 conference setting I ask you please to keep your
22 voice at a level that will transmit for the court
23 reporter and be conscious of and avoid speaking at
24 the same time as another person. That will help

1 us to achieve a very clear transcript. A quick
2 background on this proposal. The Environmental
3 Protection Agency proposed it on August 3rd of
4 this year and the board accepted it on August
5 17th. The first hearing took place here in
6 Springfield on October 17th. A previous Hearing
7 Officer order had directed participants to
8 pre-file testimony for this hearing on or before
9 Thursday, November 9th and let me run through what
10 the board has received.

11 On October 9th, Captain
12 Michael -- I'm sorry. October 19th Captain
13 Michael Curry filed testimony for this hearing and
14 on November 1st the IEPA filed a response to that.
15 On November 7th, Mr. Meckes filed testimony on
16 behalf CWLP. On November 8th, Mr. DeWitt filed
17 testimony on behalf of the Illinois Department of
18 Public Health.

19 I didn't overlook Captain Curry,
20 but on November 8th you also filed supplemental
21 testimony. IEPA then responded to his
22 supplemental testimony on October -- on November
23 14th. I do want to also note in addition to
24 responding to Captain Curry's testimony and its

1 response to his supplemental testimony IEPA has
2 filed a response to public comments number one
3 through six.

4 Public comment number one was
5 filed by the Illinois Plumbing, Heating and
6 Cooling Contractors and public comments two
7 through five, which are substantially similar to
8 one another, address the proposed cross-connection
9 requirements in IEPA's Subpart O. So those
10 responses are part of our record in this
11 proceeding. I do want to note also that the
12 agency on Tuesday, November 14th filed a response
13 to public comments seven and eight. Those were
14 from the Illinois section of the American Water
15 Works Association and the Central Lake County
16 Joint Action Water Agency, respectively.

17 I also want to note that the
18 original Hearing Officer order had strongly
19 encouraged participants to pre-file questions for
20 this hearing before it began. The board did
21 submit some questions through the clerk's office
22 yesterday afternoon. We appreciate the agency's
23 quick response to those. Those were filed close
24 to the end of the day yesterday and I know that

1 the agency has some comment -- some copies of
2 those responses if any of the participants here
3 would like to take a look at those.

4 I do want to stress under
5 Section 102.424(f) of our procedural rules all of
6 this pre-filed testimony, the questions and the
7 responses have been entered into the record as if
8 read aloud here today. So the witnesses certainly
9 can offer a brief introduction or summary, but
10 hopefully we can proceed pretty quickly to any
11 questions that the other participants have. We
12 did discuss briefly off the record with the
13 participants the order of hearing and -- and it
14 was to proceed in order of filing. So we'll
15 first, Steve, call Captain Curry to be sworn in
16 for any responses and we'll do that in just a
17 moment, Captain. Then we'll have Mr. Meckes step
18 forward to be sworn in and respond to questions.
19 We'll conclude with Mr. DeWitt and then see if
20 there are any witnesses who did not pre-file
21 testimony.

22 MR. RAO: Mr. Marvel is here and he
23 would like to testify.

24 HEARING OFFICER FOX: Very good.

1 What we will do at the conclusion of the witnesses
2 who have pre-filed is have him do that. He is
3 here on behalf of the backflow contractors, is
4 that correct, Anand?

5 MR. MARVEL: Backflow Committee.

6 MR. RAO: Yes, Backflow Committee.

7 HEARING OFFICER FOX: Very good.

8 We -- as I said, we'll go through those three
9 witnesses who did pre-file testimony and then we
10 can arrange to have him sworn in and take a seat
11 so that we can pose any questions that either the
12 board or, of course, the other participants have.
13 Thank you for alerting me to him. I do want to
14 note that under the board's procedural rules any
15 document to be offered as a hearing exhibit must
16 be received by the clerk's office at least 24
17 hours before the scheduled start of the hearing.

18 Any document that is not filed
19 by that deadline may be filed after the hearing as
20 a public comment. At the end of the afternoon
21 yesterday, I checked with our clerk and he had
22 received no submissions, no filings that were
23 intended to be offered as a hearing exhibit. So
24 all of our witnesses should be proceeding on the

1 basis of the testimony and other documents that
2 have been pre-filed.

3 As -- as we were just
4 discussing, Mr. Rao, the rules do allow testimony
5 that is not pre-filed to be offered as time
6 permits and we'll have Mr. Marvel sworn in as I
7 said once we have concluded the questions of the
8 first three witnesses. We can also accept any
9 public comments at that time. There is a sheet
10 inside the door if anyone wishes to offer a
11 comment and, Anand, I'll ask for your help if
12 there is anyone in Chicago who would like to
13 comment. Any questions about our procedures
14 before we get underway with Captain Curry?

15 Captain, if you wouldn't mind
16 stepping forward, we'll have the court reporter
17 swear you in.

18 WHEREUPON:

19 MICHAEL CURRY

20 called as a witness herein, having been first duly
21 sworn, deposeth and saith as follows:

22 HEARING OFFICER FOX: Captain Curry,
23 please have a seat. The microphone is in front of
24 you so I think you'll be audible to the folks in

1 Chicago. Do you have an introduction or summary,
2 sir, that you'd like to offer to those of us here
3 today?

4 MR. CURRY: No, I believe that
5 everything is in the record except we've had
6 communications with the agency as late as
7 yesterday and I'm not sure procedurally how they
8 want to handle that.

9 HEARING OFFICER FOX: We will see if
10 the agency, Captain -- see if the agency or any of
11 the other participants have questions for you.

12 MR. CURRY: Okay.

13 BY MS. OLSON:

14 Q. Captain Curry, did you want to
15 summarize anything before we get started? I can
16 just run through this stuff, the communications
17 that we've had.

18 A. No.

19 Q. Okay. So it's my understanding that
20 based on what the agency submitted in response to
21 your second supplemental response, you have some
22 suggested changes, is that right?

23 A. Yes.

24 Q. So the first one I see here is for

1 **the Alkalinity Difference Technique, is that**
2 **right? I can show you here. We can just run**
3 **through them on the record. Are you suggesting**
4 **that we strike through the phrase "Marble Test"?**

5 A. I have another document that's later
6 than this, was -- was prepared yesterday afternoon
7 that I can give -- I can give that to you right
8 now.

9 **Q. Sure.**

10 A. And if the Hearing Officer needs a
11 copy, I can print one over.

12 HEARING OFFICER FOX: Let me ask you
13 this quickly. Can you please, for the record,
14 identify the subsection or section you're
15 referring to?

16 MS. OLSON: Sure, this is in Section
17 604.900 and there were some questions back and
18 forth between Captain Curry towards the agency on
19 stability and as late as, I believe, Tuesday the
20 agency filed a new Section 900 -- 604.900 and
21 Captain Curry here has reviewed that section and
22 provided comment. We can go through them if you'd
23 like or is it okay to submit it into the record?
24 How would you like to do this?

1 HEARING OFFICER FOX: Here is what I
2 propose. If you have questions based on the --
3 the responses that you have received, please
4 proceed with those. As I mentioned, the hearing
5 exhibit, the deadline for submitting documents as
6 a hearing exhibit has passed. If you or Captain
7 Curry or both would be willing to submit those as
8 a -- a post-hearing comment on behalf of either or
9 both of you jointly, I think that would be the
10 cleanest way consistent with the rules to
11 introduce that into the record.

12 BY MS. OLSON:

13 Q. So, Captain Curry, we have reviewed
14 your proposed changes to the language and we don't
15 have any problem with it. So we will take this
16 language and we will propose it as a post-hearing
17 comment from the agency on the agency's behalf.

18 A. Okay.

19 Q. Does that take care of your concerns
20 with the language that we proposed?

21 A. Yes.

22 Q. Thank you.

23 HEARING OFFICER FOX: And -- and,
24 for the record, Captain Curry and the Agency, it's

1 not that I wish to discourage conversations among
2 the participants of that nature, but I do want to
3 particularly for these video conference hearings
4 to have hearing exhibits in the record in advance
5 so we can circulate, but I think it sounds like as
6 if you're satisfied with the post-hearing comment
7 process. We'll allow you to introduce that into
8 the record on a timely basis.

9 MS. OLSON: Yes.

10 HEARING OFFICER FOX: Thank you.

11 Does the agency have any additional questions for
12 Captain Curry?

13 MS. OLSON: No.

14 HEARING OFFICER FOX: Very good.

15 Does any of the other participants, whether IDPH
16 or CWLP, have any questions for Captain Curry?
17 Captain Curry, I have one on behalf of the board
18 actually. I'm sorry it's a little awkward to pose
19 it from behind you. I need to find it. Thank
20 you.

21 On page one of your original
22 testimony on, I believe, October 19th, you have
23 indicated that IEPA's proposal didn't define some
24 of the terms that IEPA had used in chart 64 and

1 that definitions would be --

2 THE COURT REPORTER: Wait. I didn't
3 hear that over the cough.

4 HEARING OFFICER FOX: The agency
5 responded that there were definitions I believe in
6 parts 601 and 602 and in the document entitled The
7 Water Dictionary that was incorporated by
8 reference. If you have had a chance to look at
9 those, are there any other terms that you think
10 still need to be defined in these rules?

11 MR. CURRY: No, I believe what the
12 agency presented is satisfactory.

13 HEARING OFFICER FOX: Very good.
14 Thank you, Captain Curry. I think that wraps up
15 the questions, but I'll give you -- for you,
16 Captain Curry, at least, but I'll give everyone
17 else a chance both here and in Springfield of
18 course (sic) to indicate whether they have
19 anything else they would like to ask the captain.
20 I am not seeing or hearing any. So, Captain
21 Curry, we appreciate all of the filings and
22 information you submitted in your presence here
23 today. Thanks very much.

24 MR. CURRY: Thank you. Thanks for

1 the opportunity.

2 HEARING OFFICER FOX: Mr. Meckes, we
3 are prepared to have you step forward and, Steven,
4 the court reporter, when you are prepared, please
5 proceed to swear him in for questioning.

6 WHEREUPON:

7 TED MECKES
8 called as a witness herein, having been first duly
9 sworn, deposeth and saith as follows:

10 HEARING OFFICER FOX: Debbie, before
11 we begin, forgive me for more of a mechanical
12 conversation here.

13 Steven, are you able to see
14 Mr. Meckes as the witness and Ms. Williams in the
15 red jacket as the counsel for CWLP?

16 THE COURT REPORTER: Yes.

17 HEARING OFFICER FOX: Very good.
18 Mr. Meckes, you've been sworn in and as I have
19 indicated if there is a summary introduction that
20 you would like to offer, please feel free to do
21 that. If not, we can go ahead to questions.

22 MR. MECKES: Okay. I'd like to
23 introduce a little summary. First of all, I want
24 to thank the IEPA staff for their hard work in

1 cooperating with us in these regulation updates
2 that the water providers and the design engineers
3 must live by for the future. These changes will
4 improve our industry.

5 My only issues related to
6 Section 604.725 chlorine residual and that is with
7 raising the minimum chlorine residual. First of
8 all, we feel there is no scientific data to
9 support this change. Only a few states have
10 higher values. Under current IEPA regulations,
11 water is completely disinfected prior to
12 consumption by the first user and an entry point
13 residual must be maintained. In addition,
14 pressure has to be maintained in the large
15 distribution system above 20 PSI at all times. A
16 combination of these facts, waters disinfected
17 prior to first use, pipelines remain pressurized
18 and any detectable amount of chlorine assures
19 water was, indeed, properly treated.

20 This demonstrates that a
21 residual of 0.5 or even a 1.0 total residual is
22 irrelevant. The federal regulation that chlorine
23 residual is detectable provides an adequate public
24 health protection. Increasing chlorine residual

1 will increase disinfection bi-products. The
2 formation of disinfection bi-products is simple
3 math. The more disinfectant, the more
4 disinfection bi-products and there is a cost with
5 this change: Increased flushing costs, increased
6 chemical cost due to raising chlorine feed as well
7 as installing water samplers.

8 With that, I thank you for the
9 opportunity to express my concerns and this is an
10 excellent proposal to clarify and simplify the
11 water professional and design engineer's job in
12 the State of Illinois. With that, I'd be happy to
13 answer any questions the board may have.

14 HEARING OFFICER FOX: Mr. Meckes,
15 thanks very much. We can open the floor to
16 questions, perhaps first with the agency.
17 Ms. Olson?

18 MS. OLSON: Thank you for your
19 testimony. The agency does not have any questions
20 for you.

21 HEARING OFFICER FOX: Does the
22 Department of Public Health, Captain Curry or any
23 of the other participants have any question for
24 Mr. Meckes?

1 MR. DEWITT: IDPH does not.

2 HEARING OFFICER FOX: Is there
3 anyone, Anand, in Chicago who has indicated that
4 they have any questions for Mr. Meckes on behalf
5 of CWLP?

6 MR. RAO: No.

7 HEARING OFFICER FOX: Very good.

8 MR. RAO: We have questions.

9 MS. WILLIAMS: Are we going to do
10 board questions?

11 HEARING OFFICER FOX: The CWLP is
12 apparently doing my job for me. Thank you for
13 catching my oversight, which I think Anand Rao was
14 about to -- to catch as well. Mr. Meckes, I did
15 have a question. I apologize if I seemed I was
16 letting you off the hook.

17 MS. WILLIAMS: I was ready for it.
18 I promised to get.

19 HEARING OFFICER FOX: We had
20 submitted briefing questions yesterday afternoon,
21 one of which is that the proposed regulations, of
22 course, require the minimum free chlorine residual
23 of 0.5 mg/L or minimum combined residual of 1.0
24 mg/L maintained in all active parts of the

1 distribution system and 611.101 defines
2 distribution system to include all points
3 downstream of an entry point to the point of
4 consumer ownership and the board was hoping that
5 you would clarify whether a CWS, presumably
6 including CWLP, is responsible to maintain the
7 proposed residual chlorine level at the point of
8 use in a larger building or facility or only
9 within the distribution facilities?

10 MR. MECKES: That's an interesting
11 answer. But in the water provider's mind, we lost
12 public confidence with the Flint, Michigan issue
13 and legislatures and the public believe it is our
14 responsibility to the tap and as water providers
15 we understand that our main purpose and
16 responsibility is to provide safe drinking water
17 for our customers.

18 As I said in my testimony -- my
19 written testimony, we cannot be responsible for
20 the condition of the plumbing in interior
21 buildings and structures. We could install water
22 sampling stations in our distribution mains. But
23 how do we know if the customers are drinking safe
24 water? That's our question being our main

1 responsibility is to protect the public.

2 In Springfield alone, we have 48
3 sample sites and 41 alternates that are located
4 strategically throughout our city. We look for
5 sites that are accessible seven days a week, for
6 example, gas stations, restaurants, city owned
7 buildings, basically where people frequent so that
8 we can test the water that the people are
9 drinking. Installing sampling stations on our
10 water distribution mains may solve that problem of
11 the chlorine residuals, but it comes at a cost.
12 Each sample station is about \$900, plus we have to
13 dig up the water main, tap the water main, install
14 the sample station, clean up the area. It's a
15 total cost of approximately \$3,000 per station.

16 For Springfield alone, that
17 would be about \$250,000. And, more importantly,
18 we would not know the quality of the water that
19 the people are drinking, does that answer your
20 question?

21 HEARING OFFICER FOX: I appreciate
22 your response very much, Mr. Meckes. Are there
23 any follow-up questions either from the board or
24 from those present for the hearing?

1 MR. RAO: Mr. Meckes, you mentioned
2 that while you are not responsible for the
3 residual chlorine levels within the consumers --
4 within a building or a residence, would the higher
5 level that the agency has proposed assure adequate
6 protection for the consumer compared to what we
7 have right now on the books?

8 MR. MECKES: Well, if you recall or
9 remember, the inactivation or kill of the
10 pathogens happen at the treatment plant and if the
11 residual is detected in a distribution system,
12 there is no further contamination in the
13 contribution system, that signifies that you have
14 quality water. The drop in chlorine residual
15 is -- is natural. You will have a natural drop in
16 chlorine residual. But we can continue to monitor
17 that and notice that if we have contamination,
18 that residual drops more than normal. We feel
19 that a 0.23, 0.53, a 0.5, a 1.0 total is
20 irrelevant.

21 MR. RAO: Okay.

22 HEARING OFFICER FOX: Any further
23 questions, Mr. Rao, or anyone in Chicago?

24 MS. SANTOS: Tim, can we have the

1 record reflect that I'm present at the meeting?

2 HEARING OFFICER FOX: Absolutely.

3 That is our board member Cynthia Santos who is our
4 other board member in this proceeding. Welcome.

5 MS. SANTOS: Thank you.

6 HEARING OFFICER FOX: Is there any
7 additional questions, Mr. Rao, for Mr. Meckes?

8 MR. RAO: No.

9 HEARING OFFICER FOX: I think you
10 have taken care of the board's questions that we
11 filed yesterday. Is there anyone else present
12 here in Springfield that has a question they'd
13 like to pose to Mr. Meckes? I think that --

14 MS. OLSON: We do not.

15 HEARING OFFICER FOX: Thank you.
16 Mr. Meckes, that takes care of your testimony. We
17 appreciate your being here today. Mr. DeWitt,
18 that brings us to you. If you would, again,
19 identify yourself for the record, we'll have the
20 court reporter swear you in and we'll move onto
21 questions.

22 MR. DEWITT: Sure. Justin DeWitt.
23 I'm with the Illinois Department of Public Health.

24

1 WHEREUPON:

2 JUSTIN DEWITT

3 called as a witness herein, having been first duly
4 sworn, deposeth and saith as follows:

5 HEARING OFFICER FOX: Mr. DeWitt,
6 thank you also for your presence this morning. As
7 I have indicated, your testimony is entered into
8 the record as if it has been read aloud. If you
9 have a summary or introduction that you'd like to
10 begin with, please feel free to proceed with that
11 and, if not, we can go to questions based on that
12 testimony.

13 MR. DEWITT: Thank you. I
14 appreciate the opportunity to appear this morning
15 on behalf of the department. As my testimony was
16 pre-filed, I won't make too much comment about
17 what is contained in that testimony other than to
18 say that the department over the last several
19 years has -- has really tried to work
20 strategically with the agency in developing
21 regulations around public water and how water is
22 supplied and part of the reason that we have
23 endeavored to do that is smooth the regulatory
24 interface between IEPA and IDPH relative to water

1 being delivered to plumbing systems which is the
2 purview of IDPH and we feel that this set of
3 regulations as proposed do that.

4 Further, the increase of
5 chlorine that has been the topic of discussion
6 this morning we do feel is important. If we can
7 increase the -- the potential for reducing
8 pathogens throughout the system, we feel that
9 that's the appropriate step to take and in my
10 testimony you will find discussion of outbreaks
11 where the department has found in its testing that
12 no residual chlorine, whether free or combined,
13 was found at sites where we had outbreaks and so
14 any increase that can be made will certainly move
15 towards improving the quality of water and
16 plumbing systems in buildings. We don't feel it
17 will create any necessary hazards at the levels
18 proposed by the agency. So I think those are my
19 summary comments, Mr. Fox.

20 HEARING OFFICER FOX: Very good. I
21 appreciate it, Mr. DeWitt. Why don't we begin
22 with the agency as the proponents if you have any
23 questions for Mr. DeWitt.

24 MS. OLSON: We do not.

1 HEARING OFFICER FOX: Very good. Is
2 there any other participant before we turn to the
3 board's questions for Mr. DeWitt?

4 MS. WILLIAMS: We may have follow-up
5 from the board's questions, but I have nothing.

6 HEARING OFFICER FOX: Very good.
7 Very good. Mr. DeWitt, let me turn to the board's
8 questions that we proposed in writing yesterday
9 beginning with the one numbered eight. You had
10 noted and referred to outbreaks investigated by
11 the Department of Public Health that involved
12 potable or domestic water systems as a
13 contributing or causative factor in the
14 origination or spread of disease.

15 Can you explain if there is a
16 difference in your characterization of water as
17 domestic or potable and if there is a difference,
18 what those differences are?

19 MR. DEWITT: Certainly. My written
20 testimony reads potable or domestic water systems
21 meant to indicate that the terms are
22 interchangeable and equal. Potable or domestic
23 water systems include piping, fixtures and
24 importances addressed in the plumbing code which

1 contain and used potable water as that term is
2 defined in 77 Ill. Adm. Code 890.120.

3 Specifically, water that meets
4 the standard set forth in the Pollution Control
5 Board's rules entitled Primary Drinking Water
6 Standards domestic water systems are designed to
7 provide cold or heated water for washing,
8 cleaning, consumption and cooking among other
9 uses. The terms potable or domestic apply to all
10 non-processed water uses in commercial,
11 residential and industrial settings. These
12 systems may include a boiler or heater, a
13 recirculation -- recirculating piping system and
14 pipes terminating in taps and fixtures.

15 HEARING OFFICER FOX: Very good. Do
16 we have any questions, follow-up questions to that
17 response either in Chicago or here in Springfield?

18 MR. RAO: No.

19 HEARING OFFICER FOX: Neither seeing
20 nor hearing any, thank you, Mr. DeWitt.

21 MR. DEWITT: Sure.

22 HEARING OFFICER FOX: Let me turn to
23 question nine. The board had asked you on behalf
24 of IDPH to clarify whether the department

1 determines if potable water is the causative or
2 contributive factor in an outbreak based upon
3 sampling of potable water and, if so, where those
4 samples are taken, whether from the distribution
5 before the point of entry or from the buildings or
6 facility's plumbing systems? And I realize that's
7 a two-part question and I'll turn that over to
8 you.

9 MR. DEWITT: Sure. Thank you.

10 Determinations made by IDPH are supported by
11 scientific analysis, empirical data and the
12 preponderance of the evidence. Responsive to the
13 question, IDPH does collect samples at the point
14 closest to a water service entrance and, if
15 possible, from other proximal water services on
16 the same distribution main. In certain instances,
17 IDPH has requested the community water supply to
18 obtain samples from its distribution system and
19 provide test results of those samples to IDPH.
20 IDPH is not aware of any common provision on or
21 within a community water supply distribution
22 system where it might obtain samples immediately
23 ahead of a point of entry or water service.
24 Should the board choose to require such sampling

1 locations, IDPH could be supporting the same.

2 HEARING OFFICER FOX: Thank you,
3 Mr. DeWitt. Any follow-up questions based on
4 Mr. DeWitt's question in response to board
5 question number nine? Including there in Chicago
6 of course.

7 MR. RAO: Nothing, Tim.

8 HEARING OFFICER FOX: We have a
9 signal that we may have a question so if you will
10 bear with us for a moment, please.

11 MR. RAO: Okay.

12 MS. OLSON: No, we don't have
13 anything else.

14 HEARING OFFICER FOX: Thank you.
15 Thank you, Ms. Olson. Mr. DeWitt, moving along.
16 The board's question ten asks for the department's
17 comment on whether the sampling parameters include
18 residual chlorine and, if so, whether IDPH has
19 found any correlation between the measured
20 residual chlorine levels and the outbreaks that
21 you referred to?

22 MR. DEWITT: When IDPH performs
23 environmental investigations relating to
24 waterborne disease, a primary water quality

1 indicator is the amount of residual chlorine found
2 in the potable water system. IDPH investigative
3 staff are trained and equipped to perform field
4 tests for total and free chlorine water. While
5 water systems may contain residual levels of
6 chlorine and still be found contributing to the
7 spread of disease, those systems found have no
8 residual chlorine at all are almost universally
9 implicated in related outbreaks. So the answer
10 is, yes, we do sample for residual chlorine.

11 HEARING OFFICER FOX: Very good.
12 Any follow-up questions, Mr. Rao, or otherwise in
13 Chicago?

14 MR. RAO: Yes. Mr. DeWitt, do you
15 have this data for the outbreaks that you
16 investigated maybe over the last four or five
17 years which shows what the residual chlorine
18 levels were where you had an outbreak?

19 MR. DEWITT: To speak specifically
20 about one single outbreak that might answer that
21 question, the Legionnaires' disease outbreak in
22 Quincy as part of that investigation we looked at
23 the facility prior to any changes being made and
24 in that case we found little to no residual

1 chloramine being delivered to that campus and I
2 believe we do have the test data that we obtained
3 during that time period if the board wishes to see
4 it. Typically, those samples are taken and made
5 part of the report. Very often those reports are
6 generated through the CDC or through our
7 epidemiology group and I can certainly go back to
8 them and see if those formal reports contain that
9 data, but certainly relative to the outbreak in
10 Quincy I believe we can find that data for you.

11 MR. RAO: It would be helpful if you
12 can submit that information to the record and if
13 there is any other outbreaks that you have data
14 on.

15 HEARING OFFICER FOX: Mr. Rao, if I
16 could expand upon that, we will be setting later a
17 deadline for filing post-hearing comments and if
18 that information could be included in that
19 comment, Mr. DeWitt, I think that would be very
20 helpful as Mr. Rao has indicated.

21 MR. DEWITT: We'll work on that.

22 HEARING OFFICER FOX: We appreciate
23 it. Thank you very much. Any additional
24 questions based on that response on Mr. DeWitt's

1 part? Neither seeing nor hearing any, we had one
2 last question for you, Mr. DeWitt.

3 The board noted in its question
4 number 11 that IEPA's response to Captain Curry's
5 testimony addressed deluge showers and stated that
6 the proper construction and water tempering for
7 them has been a contentious point among the
8 regulated community, the IEPA and the IDPH and the
9 IEPA indicated that -- that to avoid conclusion,
10 these impertinences must be addressed by IDPH in
11 the plumbing code in a more complete and
12 appropriate fashion and the board's request was
13 that IDPH comment on how it might be addressing
14 the issue of the proper construction and the water
15 tempering for these deluge showers and whether
16 there are any specific regulations or guidelines
17 that the board might refer to in a board note and
18 the board note is not enforceable language but is
19 a point of information or a cross-reference that
20 might be helpful to any entities that are
21 implementing, enforcing or interpreting the rules.

22 MR. DEWITT: Okay. While not
23 pertinent to my written testimony, I'd be
24 delighted to respond and relieve any remaining

1 contention in the regulated community about deluge
2 or safety showers, including eyewash stations.
3 While the statutory authority has been given to
4 the board to establish the requirements of the
5 community water supply, including the production
6 and distribution of potable water, the
7 requirements regarding the use of that potable or
8 domestic water within or about any building or
9 buildings where a person or persons live, work or
10 assemble is exclusive purview of the Illinois
11 Department of Public Health pursuant to the
12 plumbing licensing law 225 ILCS 320. IEPA's
13 response directing questions concerning deluge
14 shower requirements to IDPH is appropriate and
15 consistent with the law as safety showers are
16 plumbing by definition and are addressed in the
17 plumbing code at 77 Ill. Adm. Code 890.800. Any
18 confusion related to the proper design and
19 construction of safety showers and eyewash
20 stations would be eliminated if designers would
21 simply comply with the plumbing code and employ
22 registered plumbing contractors when constructing
23 the potable or domestic water systems found in
24 community water supply buildings as required by

1 law.

2 I cannot opine as to the
3 propriety of the board note relating to deluge or
4 safety showers. However, I believe it is
5 appropriate and permissible for the board to point
6 to a specific regulation not under its purview
7 and, for example, to say for requirements relating
8 to the installation of emergency eye- -- emergency
9 showers and eyewash stations, see 77 Ill. Adm.
10 Code 890.800.

11 HEARING OFFICER FOX: Mr. DeWitt,
12 thank you. Are there any follow-up questions
13 either here in Chicago or based on that response
14 to the board's question 11? All right. Seeing no
15 hands or indicate -- other indications that there
16 is a question, again, there in Chicago any
17 follow-up?

18 MR. RAO: No.

19 HEARING OFFICER FOX: All right.
20 Mr. DeWitt, that exhausts the questions that the
21 board and the other participants had for you. We
22 appreciate your testimony and your willingness to
23 provide some of the data that you referred to. As
24 I mentioned, we'll be setting a deadline for

1 post-hearing comments and we can see what you
2 think about the deadline for that.

3 MR. DEWITT: Thank you.

4 HEARING OFFICER FOX: Thank you very
5 much for your time.

6 MR. DEWITT: Thank you.

7 HEARING OFFICER FOX: Mr. Rao, I'm
8 going to need to enlist your help here for a
9 moment. I believe you said that Mr. Marvel was
10 present and was --

11 MR. RAO: Yes.

12 HEARING OFFICER FOX: -- prepared to
13 testify and we have exhausted the testimony that
14 was pre-filed for this hearing and we've reached a
15 point in which we can turn to him to be sworn in
16 to testify.

17 MR. RAO: Okay. If you can take the
18 hot seat here.

19 MR. MARVEL: I appreciate that, sir.

20 WHEREUPON:

21 RICHARD MARVEL

22 called as a witness herein, having been first duly
23 sworn, deposeth and saith as follows:

24 HEARING OFFICER FOX: Very good.

1 Mr. Marvel, good morning and welcome. You've been
2 sworn in I heard. So we can turn to the testimony
3 that you would like to offer for the sake of the
4 record. I do just want to clarify that you --
5 and please correct me if I am mistaken.

6 You had submitted what the board
7 has designated as public comment number two to the
8 board on October 5th of this year on behalf of the
9 Illinois Section of the American Water Works
10 Association Backflow Committee. Did I
11 characterize that correctly?

12 MR. MARVEL: That is correct, yes.

13 HEARING OFFICER FOX: Very good.
14 Why don't we, again, having been sworn in have you
15 proceed with the testimony that you'd like to
16 offer to us today.

17 MR. MARVEL: Absolutely. My name is
18 Richard Marvel. I am, as stated, the Illinois
19 Section of American Water Works Association
20 Backflow Committee chair. I am here today as a
21 representative for the Plumbing, Heating, Cooling
22 Contractors Association as well as the Illinois
23 Plumbing Inspectors Association, Illinois Fire
24 Protection Association and a host of others to ask

1 specific questions for Subpart O for
2 cross-connection control based on the agency's
3 response that was provided to our public comments,
4 specifically public comment number two submitted
5 in October.

6 My follow-up question that I
7 have for the agency is throughout Section 604.1500
8 the agency seems to state that an inspection and a
9 test are two different items. For example, in
10 604.1510, it says "The cross-connection control
11 device shall be inspected at least annually" and
12 continues with "the inspection shall include a
13 physical test."

14 What does the agency believe an
15 inspection is being that there is no definition
16 within Section 601.105 and it is left up to
17 interpretation?

18 MS. OLSON: Can you repeat the
19 question?

20 MR. MARVEL: My question is
21 throughout Subpart O Section 604.1500 the agency
22 uses inspection and testing as if they are two
23 different items. Under 601.105, there is no
24 definition of what an inspection is. Can they

1 please provide us what that definition is because
2 right now it's currently left up to
3 interpretation.

4 HEARING OFFICER FOX: Ms. Olson, it
5 seems we can do a couple of things here and we can
6 see what you and your witnesses think. We could
7 swear in Mr. McMillan or any of the other agency
8 witnesses who were here at the first hearing to
9 respond to that question. Alternatively,
10 Mr. Marvel, what we could do is in the event the
11 agency wishes to look into your question and give
12 it some consideration and research, ask them if
13 they would respond to it in writing in a
14 post-hearing comment that would be filed at some
15 point after the hearing, perhaps in 30 -- 30 days
16 or so. We haven't set that deadline yet, but I
17 can see that the agency is considering your
18 question and let's see what they might prefer to
19 do by way of response.

20 MS. OLSON: If agreeable, we would
21 prefer to respond after the hearing in
22 post-hearing comments if that is okay with
23 everybody.

24 HEARING OFFICER FOX: Very good.

1 Mr. Marvel, the agency is, of course, fielding
2 your question for the first time today. What they
3 proposed is to examine the transcript which has,
4 of course, directly recorded your question and
5 respond by filing a written public comment after
6 the hearing.

7 MR. MARVEL: That would be
8 acceptable. Can I follow up with the reason why
9 we are asking that question so they have more
10 context to it?

11 HEARING OFFICER FOX: Especially if
12 that sheds light on your question, Mr. Marvel,
13 please go ahead.

14 MR. MARVEL: The Illinois Department
15 of Public Health has made an interpretation of
16 Rule 757.30 which states that any licensed plumber
17 who inspects plumbing shall not inspect any
18 plumbing that the licensed plumber has directly or
19 indirectly caused to be installed, repaired or
20 maintained. What that has done based on that
21 interpretation and IEPA's labeling of a
22 cross-connection control device inspector is now
23 when a backflow device fails currently, the
24 current back- -- cross-connection control device

1 inspector cannot do a physical retest after it's
2 been fixed. The outside company with its own
3 CCCDI must now come in and retest that because
4 they can't inspect their own plumbing.

5 So what -- that has two
6 unintended consequences. One being that, for
7 example, Northwestern University has over 600
8 backflow devices on campus. On average, 18 to 24
9 percent of those backflow devices will fail on an
10 annual basis which is about 144 backflow
11 assemblies. If they had to bring in a separate,
12 individual company with their own cross-connection
13 control device inspectors to retest those, it's
14 going to add about \$14,400 more in costs on an
15 annual basis just for that one facility. Now, if
16 you take that and you multiply that by state
17 universities, state hospitals, the unintended
18 consequences is hundreds of thousands of dollars
19 more a year because of this interpretation as well
20 as IEPA's stated cross-connection control device
21 inspector.

22 A backflow test is not an
23 inspection. So we need clarification on what
24 they're considering to be an inspection if it

1 includes the plumbing system whether or not it's
2 installed correctly to manufacturer specs or
3 approval agencies because that's going to
4 determine whether or not that water operators can
5 even carry this license because they don't have
6 the ability to inspect any plumbing systems. So
7 we need clarification to know how we can respond
8 to IDPH on this level.

9 HEARING OFFICER FOX: Any follow-ups
10 on the part of the agency to Mr. Marvel's
11 testimony on that issue?

12 MS. OLSON: Nope.

13 HEARING OFFICER FOX: Very good.
14 Mr. Marvel, please go ahead if you have some
15 additional testimony or questions you'd like to
16 offer.

17 MR. MARVEL: I do. On submitted
18 questions four and six, we'd like to combine those
19 two because they're within the same context. So a
20 little background on question four. We proposed a
21 solution of putting in some type of mandate that
22 cross-connection control device test reports be
23 submitted to a CWS within a period of ten days.
24 In question six, we offered the terminology to put

1 any deficient backflow being that it's failed,
2 installed incorrectly to at least have it repaired
3 within a 30-day time set. Currently right now
4 under current regulations of Title 35 as well as
5 the proposed rules and IDPH plumbing program
6 rules, there are no requirements for a deficient
7 backflow to be repaired, put back into service to
8 eliminate that potential cross-connection.

9 We're wondering if the agency
10 who said that they believe that the level of
11 detail should be left up to individual ordinances
12 and not within the state rulemaking process --
13 we're wondering if they would be willing to maybe
14 remove out the timeframe of days, but put
15 something in there like within a timely manner to
16 help the CWS's have rules to refer back to -- to
17 have the deficient backflows actually fixed and
18 repaired.

19 MS. OLSON: We would like to also
20 respond in post-hearing comments.

21 HEARING OFFICER FOX: Very good.
22 Mr. Marvel, if that was not clear, the agency
23 wishes to add the response to that question or
24 issue to their response to the previous question

1 or issue. They are apparently willing to take a
2 look at that and give further consideration to
3 that.

4 MR. MARVEL: That is acceptable. We
5 just want to -- just a little piece of
6 clarification there. The reason why we're asking
7 for some type of timeframe for things to be
8 submitted is so that way each CWS has the
9 opportunity to investigate potential
10 cross-connections because they know a backflow
11 device is not in working order. We are seeing
12 throughout our industry where consumers whether it
13 be commercial, residential they will go six or
14 eight months without fixing the deficient
15 backflow, which is, therefore, then creating a
16 cross-connection problem and a lot of CWS's that
17 we have spoke to and done a survey with just want
18 some type of reference within the code that allows
19 them to make their ordinance more stronger.

20 HEARING OFFICER FOX: Very good.
21 Any -- any follow-ups on the part of the agency to
22 Mr. Marvel's elaboration on that point?

23 MS. OLSON: No.

24 HEARING OFFICER FOX: Thank -- thank

1 you, Ms. Olson. Mr. Marvel, if you have
2 additional issues or testimony, please proceed.

3 MR. MARVEL: Just one more item.
4 The agency seems to approve of our question seven
5 about putting in a cross-connection control device
6 inspector re-certification on a three-year basis.
7 They didn't seem to have any issues with that. I
8 just want to state for the record I know the board
9 can't give any inclination on which way they would
10 like to go on adding that in or not, but currently
11 the State of Illinois is the only state in the
12 nation that doesn't require any type of
13 re-certification to be a cross-connection control
14 device inspector. Most agencies that are out
15 there throughout the nation require a biannual or
16 every three-year re-certification process to show
17 that everybody still has the competency to still
18 test backflow assemblies.

19 Currently in the State of
20 Illinois when somebody gets a backflow inspector's
21 license, they get to keep their license for life.
22 And what we find is that some guys are not -- a
23 majority of them aren't testing for five or six
24 years and, therefore, they lack the ability to

1 actually correctly complete a test and that's when
2 we're finding that they are lying on test reports
3 by simply filling in numbers with a pass/fail
4 result and not actually doing the physical test.

5 So we just want to reiterate to
6 the board that we really would hope that you will
7 accept our proposal to institute a three-year
8 renewal process because it is important to both
9 IDPH as well as IEPA on providing potential
10 cross-connection control issues in the future as
11 well as falsified test reports.

12 HEARING OFFICER FOX: Very good.
13 Mr. Marvel, the court reporter certainly has been
14 recording your position, which will be made part
15 of the record for the board's consideration and we
16 appreciate your input on that issue.

17 MR. MARVEL: Thank you.

18 HEARING OFFICER FOX: Ms. Olson, I
19 believe you have a follow-up question?

20 MS. OLSON: We do. You stated that
21 Illinois is the only state that does not require
22 re-certification. Can you supply information on
23 what other states specifically require for
24 re-certification into the record?

1 MR. MARVEL: Absolutely I can. Is
2 that information you would like me to provide
3 after this or would you like me to state examples
4 currently?

5 MS. OLSON: After the hearing is
6 fine.

7 MR. MARVEL: Okay. I'll gather
8 quite a bit of information for you so that way you
9 can see a two-year re-cert program as well as a
10 three. They are done through the American
11 Backflow Prevention Association which covers about
12 40 states and their management of the program as
13 well as ASSE which is accepted by a majority of
14 the state as well. So I'll provide you with those
15 program documents.

16 MS. OLSON: Thank you.

17 HEARING OFFICER FOX: Mr. Marvel,
18 we'll be, as I mentioned before, setting a
19 deadline for post-hearing comments and if that's
20 something that you could submit into the board's
21 record by that deadline, that would be helpful
22 apparently to the agency in addition to the board.
23 So we would appreciate your help with that. Thank
24 you.

1 MR. MARVEL: Absolutely. Thank you.

2 HEARING OFFICER FOX: Any additional
3 testimony or issues you wish to raise, Mr. Marvel?

4 MR. MARVEL: Not on our behalf, no.

5 HEARING OFFICER FOX: Very good.

6 Are there any questions from the other
7 participants here in Springfield or there in
8 Chicago that they would like to raise to
9 Mr. Marvel on the basis of his testimony? I am
10 neither seeing nor hearing here. Mr. Rao, any
11 indication there?

12 MR. RAO: No.

13 HEARING OFFICER FOX: Very good.
14 Mr. Marvel, we are done with your testimony and
15 questions. We appreciate your participation
16 today. Thank you.

17 MR. MARVEL: Thank you.

18 HEARING OFFICER FOX: I can see
19 here, Mr. Rao, on the sign-in sheet for comments
20 that no one has appeared wishing to offer a
21 comment on this proposal. Is there anyone present
22 in Chicago who wishes to offer a comment?

23 MR. RAO: No.

24 HEARING OFFICER FOX: Very good. I

1 think the point has come in which we can quickly
2 go off the record to discuss the procedural issue
3 of post-hearing comments and the deadline for
4 those. Steven, can we go off the record for just
5 a moment?

6 THE COURT REPORTER: Yes.

7 HEARING OFFICER FOX: Thanks very
8 much.

9 (Whereupon, a discussion was had
10 off the record.)

11 HEARING OFFICER FOX: I do want to
12 address the issue of an Economic Impact Study and
13 forgive me for reading this mechanically. Section
14 27(b) of the Environmental Protection Act requires
15 that the board must request that the Illinois
16 Department of Commerce and Economic Opportunity
17 conduct an Economic Impact Study of proposed rules
18 before the board adopts them. The board then must
19 make either the study itself or the department's
20 explanation for not conducting one available to
21 the public at least 20 days before a public
22 hearing such as this one.

23 In a letter dated August 28th of
24 2017, the board's chairman Katie Papadimitriu,

1 requested that DCEO conduct an Economic Impact
2 Study of this proposal and the board specifically
3 requested a response by October 13th of 2017, but
4 the board has received no response from DCEO to
5 this request.

6 Is there anyone who would like
7 to testify or comment upon either the board's
8 request or DCEO's response? I'm not seeing or
9 hearing any in Springfield. Is there any response
10 in Chicago?

11 MR. RAO: No.

12 HEARING OFFICER FOX: Very good.
13 Let me, again, take one last opportunity to
14 determine whether there is anyone who wishes to
15 testify or comment that hasn't already done so?
16 No indication here in Springfield. I am seeing
17 none there in Chicago. I do want to wrap up a
18 couple of procedural issues that we've discussed
19 off the record.

20 The copies of this transcript
21 are expected to be available to the board by
22 Monday, November 27th of 2017. Once it is filed
23 with the board, we will post it promptly to the
24 board's website under the clerk's office online or

1 COOL under this docket number R18-17. Before it
2 takes action on the agency's proposal, the board
3 will hold open a post-hearing comment period.

4 The comments will be due in the
5 board's office on or before Friday, December 22nd
6 of 2017 and any of the participants who wishes to
7 file a response to any of the comments that are
8 filed on or before that date can do so on or
9 before Friday, January 5th. Please remember to
10 file electronically and to include your Hearing
11 Officer on your service list. I always
12 appreciate, of course, seeing notification of
13 those.

14 Are there any other matters that
15 we need to address before we adjourn the second
16 and final hearing? I'm not seeing any in
17 Springfield. Any there in Chicago? Let me thank
18 all of you particularly for your cooperation with
19 this video conference hearing as we try to make
20 effective use of this technology. I do appreciate
21 your flexibility on all of these arrangements and
22 particularly for those of you who filed testimony
23 or participated otherwise, the board does
24 appreciate your input and participation. So let

1 me thank you and we can adjourn in time for the
2 board meeting at 11:00. Thank you, all.

3 MR. RAO: Thank you, Tim.

4 MS. ZALEWSKI: Thank you, Tim.

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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF COOK)
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5 I, Steven Brickey, Certified Shorthand
6 Reporter, do hereby certify that I reported in
7 shorthand the proceedings had at the trial
8 aforesaid, and that the foregoing is a true,
9 complete and correct transcript of the proceedings
10 of said trial as appears from my stenographic
11 notes so taken and transcribed under my personal
12 direction.

13 Witness my official signature in and for
14 Cook County, Illinois, on this _____ day of
15 _____, A.D., 2017.
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STEVEN BRICKEY, CSR
8 West Monroe Street
Suite 2007
Chicago, Illinois 60603
Phone: (312) 419-9292
CSR No. 084-004675



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