

ILLINOIS POLLUTION CONTROL BOARD
July 1, 1982

PROPOSAL FOR RULEMAKING)
FOR CHAPTER 6: PUBLIC WATER SUPPLY) R81-6
REGULATIONS OF THE) R81-28
ILLINOIS POLLUTION CONTROL BOARD)

Proposed Opinion. Second Notice.

OPINION AND ORDER OF THE BOARD (by I. Goodman):

On March 4, 1982 the rules proposed in this regulatory matter, which also served to codify Chapter 6: Public Water Supplies, went to First Notice in accordance with Section 5.01(a) of the Illinois Administrative Procedure Act and were published in the Illinois Register, Volume 6, Issue #14 on April 2, 1982. During First Notice only the Illinois Environmental Protection Agency (Agency) submitted public comments. Based on these comments, the proposed rules are substantively amended as explained below. Typographical errors noted by the Agency and the Secretary of State, State Library Division, during its codification review are also corrected in the proposal to be sent to Second Notice.

Pursuant to Agency comments Sections 601.102 and 601.105 of Part 601 are amended and former Rule 103 deleted. Initially subpart (b) of Section 601.102, Applicability, delineated which sections of this Chapter applied only to community water supplies. Since the sections listed therein already contain language to that effect, subpart (b) is deleted as unnecessary and subparts (a) and (c) combined into one paragraph. The Agency also noted that Chapter 6 no longer requires a repealer. Former Rule 103, Repeals, provided for the transition from Department of Public Health rules to Board regulations for public water supplies. With the adoption of Chapter 6 in November, 1974, this transition is long past and the rule now unnecessary; it is repealed in its entirety.

The Agency requested that the definitions of public water supply, community water supply and non-community water supply not be deleted as proposed from Section 601.105 despite the fact that they are statutorily defined. The Agency argued that since statutory mandates are included elsewhere in Chapter 6, these definitions should be included for the same reason. The statutory mandate found at Section 601.101, General Requirements, makes Chapter 6's format consistent with that of Chapters 2 and 3, but more importantly it encompasses the purpose and intent of the Chapter into an enforceable rule. There is no similar rationale to reiterate these definitions within Chapter 6. The Agency also asked that the definitions for "dose equivalent," "operational testing,"

"plan documents" and "safe" not be deleted from Chapter 6. Only the terms "dose equivalent" and "safe" appear in Chapter 6, and only the former requires more than a dictionary or logical definition; therefore, all but "dose equivalent" remain deleted. The reference to the "Glossary Water and Wastewater Control Engineering," formerly found at the introduction to Rule 104, Definitions, also remains deleted, since at best this document can only serve as a guide to the Board and others when interpreting Chapter 6.

It should be noted that the definition for "confined geological formation" is amended. As proposed by the Agency and in First Notice, the second sentence of that definition was ambiguous and inappropriate as a definition since it constituted a rule. Section 605.105(b) which requires monthly sampling of the raw water for supplies exempted from chlorination provides the specific rule to assure that these formations remain free from contamination. The second sentence is therefore deleted.

In Part 602, Permits, the Agency asked that the requirement that all construction work at a public water supply be done in accordance with good engineering practice not be deleted from Section 602.101, former Rule 201 on Construction Permits. Although the term "good engineering practice" is subject to broad interpretation and compliance with such requirement likely to be an issue of fact in any of the Board's adjudicatory proceedings with or without the rule, the requirement is retained in the rules proposed for Second Notice.

The Agency's principal comment questioned the authority of the Board to prescribe a Restricted Status program in Part 602. The Agency argued that it exclusively has the authority pursuant to Section 39 of the Act to establish such a program, once the Board has required that a permit be obtained. The Board not only has a general grant of regulatory authority in Sections 5 and 27 of the Act, but Section 17 authorizes the Board to adopt regulations governing the construction, continuous operation, changes and additions to public water supplies. The present rules on permitting are premised on this authority, and the proposed rules on Restricted Status are also. Since placing a supply on Restricted Status affects its ability to obtain permits to construct additions or alterations, it is properly within the Board's purview. Furthermore, the Agency contended that the only implication of the Restricted Status program is prospective notice to the supply that a permit application may be denied, and that it is the actual permit denial that should be appealable to the Board. However, the Board recognizes that such a program has broader implications. Potential development in the area serviced or to be serviced by the supply can be affected by the imposition of Restricted Status, which in turn may affect the economic and sound environmental growth of the community. Since the effect of such rules extends beyond simply permitting public water supply facilities, it is necessary that the Board clearly

authorize the Agency to conduct such a program. Once adopted, Section 4(g) of the Act which mandates the Agency to conduct those permit programs "as may be established by this Act or regulations adopted thereunder" provides the legal basis for the Restricted Status program.

The Agency argued that it requires the flexibility to repeal this program should it become financially or otherwise unable to continue it. The Board, however, intends that the Chapter 6 permitting program now evolve to include a system which notifies the supplies and persons serviced of the potential inadequacies and violations of the supplies. It is properly within the Board's authority to require such an aid to assure the continuous sanitary quality, mineral quality, or adequacy of public water supplies throughout the State. The rules on Restricted Status remain proposed in Section 602.106.

The Agency did not request any clarification of Part 603, Owners and Responsible Personnel. After reevaluation by the Board, however, the four rules contained therein are reworded and reorganized into five rules. This is intended to make clear that there are three initial requirements for each public water supply, even before permitting and actual operation and maintenance is considered. Each supply must be organized and under the auspices of an actual owner or organized body; each supply must retain a certified operator or registered person in responsible charge; and each supply must file and keep current forms with the Agency identifying its ownership and responsible personnel.

The Agency offered no further substantive changes in the remaining Parts, but did propose additional clarifying language. These amendments are included in the text sent to Second Notice.

On June 22, 1982, the Board was notified in writing by the Department of Energy and Natural Resources that a negative declaration of economic impact was approved by it and the Economic and Technical Advisory Committee on June 11, 1982. With no economic impact statement necessary and the Board's review of the proposed rules and First Notice comments completed, Chapter 6 as amended and codified is sent to Second Notice.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 15th day of July, 1982 by a vote of 5-0.


 Christan L. Moffett, Clerk
 Illinois Pollution Control Board