ILLINOIS POLLUTION CONTROL BOARD
March 4, 1982

MICHAEL SOBEL, et al.,	)	
	)	
Petitioners,	)	
	)	
v.	)	PCB 82-20
	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J. Anderson):

Petitioners seek variance for a proposed sewer extension which discharge would flow through the sanitary sewer system of the Village of Riverwoods and would be treated by the treatment plant operated by Lake County. The Board finds that both the Village and Lake County must be made parties to this action, as either additional petitioners or respondents, pursuant to Procedural Rule 303(c). If an amended petition curing this defect is not filed within 45 days of the date of this Order, this petition will be subject to dismissal.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 4th day of March, 1982 by a vote of 4-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
March 4, 1982

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

1ST NOTICE PROPOSED OPINION (by I. Goodman):

The Board's authority and regulations concerning public water supplies are premised on two state statutes: the Environmental Protection Act, Ill. Rev. Stat., Ch. 111½, Sections 1001 et seq., and "An Act to Regulate the Operation of a Public Water Supply," Ill. Rev. Stat., Ch. 111½, Sections 501 et seq. ("Act" and "Certified Operators Act," respectively). On September 4, 1981, both statutes were amended by Public Act 82-393. Effective January 1, 1982, this law changes the definition of a public water supply ("supply"), limits which supplies can be required to chlorinate, and relaxes the requirements that a supply retain a certified public water supply operator.

On November 24, 1981, the Illinois Environmental Protection Agency ("Agency") proposed amendments necessary to conform the Board's Chapter 6: Public Water Supplies with this new legislation. The Agency's proposal also included some corrections to minor errors appearing in the current regulations. The Board docketed this proposal as R81-28 and ordered hearings set. Shortly thereafter, the Board requested that the Agency submit a codified version of Chapter 6 pursuant to the Illinois Administrative Procedure Act, Section 1007, incorporating its proposed changes. The same was received by the Board on January 19, 1982.

Public hearings were held on January 27, 1982 in Springfield and on February 8, 1982 in Chicago. To the extent possible, the contributions by the public at the first hearing have been incorporated into the Board's Order. No public participants were present at the second hearing. Economic hearings are not necessary in this rulemaking, the Department of Energy and Natural Resources having issued a Declaration of Negative Impact Statement pursuant to Section 4(d)(4) of "An Act in relation to natural resources, research data collection and environmental studies" (Ill.Rev.Stat. Ch. 96½, par. 7404, 1979 as amended).

The Board acknowledges the assistance of Marili McFawn in drafting this Opinion and for serving as hearing officer.

In both the Certified Operators Act and the Act, the definition of public water supply has been amended. While the physical description of a public water supply, i.e., mains, pipes, wells, etc., has been retained, the definition now depends on how many service connections or persons serviced, rather than the number of lots serviced or to be serviced. The new definition also created two categories of a public water supply. A public water supply is now either a "community water supply" or a "non-community water supply." When a public water supply is the former, the scope is expanded to include not only the number of existing service connections, but also the number of connections intended. Alternatively, the definition can be based on the number of residents serviced. The definition of a "non-community water supply" is couched in the negative. If a public water supply is not a "community water supply," then it is a "non-community water supply." Considered collectively, these legislative amendments make the scope of the Illinois regulatory scheme for water supplies the same as that found in the federal Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.

The amendments distinguishing the two categories of public water supplies exclude non-community supplies from their provisions. Therefore, the Board no longer has jurisdiction over non-community supplies for the purpose of the Certified Operators Act or the Act. Accordingly, Section 601.102, Applicability, has been added to Chapter 6. This section makes clear that Chapter 6 does not apply to those public water supplies classified as non-community water supplies, and that certain regulations, such as monitoring radiological quality, are applicable only to public water supplies classified as community water supplies.

As amended, Section 17(b) of the Act requires that the Agency grant exemptions to qualifying community water supplies from "any mandatory chlorination requirement of the Board." The Board had such a chlorination requirement, former Rule 305, which has been retained in the codified version of Chapter 6 at Section 604.104. This Section now also lists qualifying criteria for community water supplies seeking exemption from chlorinating the drinking water. A community water supply can qualify for such an exemption in one of two ways. First, an exemption is automatically granted if a community water supply buys all its water from a regulated supply which chlorinates and the supply seeking exemption regularly monitors sufficient chlorine residuals in its own distribution system. The second means is for the supply to submit a written request to the Agency and satisfy eight statutory criteria. These criteria have been adopted by the Board at Section 604.403.

Five of these criteria are self-explanatory, while three require some further explanation. Subsection (c) of Section 604.403 requires that the community water supply's raw water source not be subject to contamination. To fully understand the implications of this criteria, it must be read in conjunction with Section 604.501(e) and the Chapter's new definition of

"confined geologic formation". It is clear that the requesting supply's raw water source must be groundwater, specifically protected. Subsection (d) requires that the supply not have a history of persistent or recurring contamination. This is the same language used in the statute. Definitions of "Persistent Contamination" and "Recurring Contamination" are included in this rulemaking to specify which sampling histories prohibit a supply an exemption from chlorination. The last criteria requiring explanation is found in Section 17(b)(6) of the Act, and now in Section 604.403(f). What is meant by and what would be approved by the Agency as an "active program" to educate consumers on preventing contamination is contained in former Rule 314, now Section 605.112. The Agency had been instructed therein to adopt Technical Policy Statements about approving cross-connection control programs. These same guidelines are now to be followed by supplies seeking exemption from chlorination to satisfy the "active program" requirement.

Once the exemption from chlorination is obtained, it can only be lost if the supply continuously fails to sustain any of the qualifying criteria. According to the Act and Section 604.104(c), when this occurs the supply must immediately initiate chlorination. This language is not intended to imply that the supply must provide stand-by chlorinating equipment. It should be recognized that if during the interim between loss of the exemption and chlorinating public health is endangered, the supply is required by statute and elsewhere in Chapter 6 to take the necessary steps to alert its consumers of the danger, e.g., issue a boil order.

Formerly, the Certified Operators Act required that all regulated public water supplies retain the services of a certified public water supply operator, properly qualified under that act. The new statutory amendments relax this mandate. Now certain public water supplies and those in the category of community water supplies can instead retain a registered person in responsible charge. Furthermore, those public water supplies categorized as non-community supplies need neither a certified operator or registered person in responsible charge. These statutory changes have been reflected in Part 603, Ownership and Responsible Personnel.

The Certified Operators Act sets out the type of public water supplies automatically granted such an exemption and the conditions under which public water supplies and community water supplies can seek such an exemption. Chapter 6 has not been amended to include these criteria, the Act itself has been referenced instead. Chapter 6 at Section 603.103, Registered Person in Responsible Charge, does require that those supplies not statutorily exempted request this status from the Agency. If such a supply qualifies under the statute, the Agency is then to issue a written exemption. Supplies receiving written exemption or automatically exempted must then file a signed statement with the Agency identifying its registered person in responsible charge. That person must also sign this statement.

Apart from those amendments statutorily required, rules pertaining to the Agency placing supplies on restricted status have been added at Section 602.106. The Agency disagreed with their inclusion in this Chapter (R. 48, 49). No public comments were received on this issue either at the hearings or in writing, despite the fact that such comments were solicited by the Board. These rules are being included for two reasons. First, the Agency is currently placing supplies on restricted status pursuant to its authority under §39 of the Act, in an effort to forwarn supplies of their deficiencies. Although commendable, this may be insufficient notice to such supplies. By providing rules for this practice in Chapter 6, all supplies should now be equally notified that it is a permanent part of the Agency's permitting authority and issuance. Secondly, such a rule provides supplies so affected Board review of the Agency's decision in this area.

As stated at the outset, the Agency proposed minor changes to Chapter 6 to correct typographical errors, to update statutory references and to clarify a number of ambiguities existing in the regulations. These changes have been adopted, along with changes necessary to Chapter 6's codification. However, two minor changes require brief explanations. The Agency proposed reducing the number of bacteriological samples required from supplies servicing populations of 100 or less. The reduction from two samples per month to one was requested by the Agency to relieve its laboratory's workload (R. 47) and to make the Board's requirement consistent with that of the National Interim Primary Drinking Water Regulations (R. 21). This change is reflected in Section 605.102.

Secondly, the Agency proposed specifying that representative samples of finished water for bacteriological analysis be taken from the supplies' distribution system. Since it also is in accordance with the National Interim Primary Drinking Water Standards (R. 21) it is accepted and found at Section 605.101(a).

The Agency proposed ten additional definitions for Chapter 6. Five of these were adopted by the Board and relocated along with the definitions which were retained to the end of Chapter 6. However, the other five proposed were not adopted because the terms did not appear in Chapter 6, were already defined in the Statutes, or were explained within the applicable rules. The Board also deleted seven existing definitions: community water supply, dose equivalent, engineer, non-community water supply, operational testing, safe, and Standards. The definitions of community and non-community water supply were deleted because they are defined in both applicable statutes. "Standards" was deleted because it does not appear anywhere in Chapter 6. The remaining terms were removed because their meanings are contained within the provisions of Chapter 6. Similarly, language which did not constitute rules, but rather provided introductory remarks, has been deleted from Chapter 6 by this rulemaking, e.g., Former Rule 101, Authority and former Rule 102, Policy.

To summarize, this rulemaking was initially intended to amend the Board's regulations to conform with the statutory changes of P.A. 82-393. That was accomplished. It has also provided a vehicle for the Chapter 6 to be corrected, refined, and codified. It should now provide the Board, the Agency, the owners, official custodians, operators and responsible personnel revised and simplified regulations by which to exercise their responsibilities involving public water supplies.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 4th day of March, 1982 by a vote of 4-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board