

ILLINOIS POLLUTION CONTROL BOARD  
June 25, 2015

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STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF: )  
)  
PUBLIC WATER SUPPLIES: PROPOSED ) R15-22  
AMENDMENTS TO 35 ILL. ADM. CODE ) (Rulemaking - Water)  
PARTS 601, 602, AND 603 )



ORIGINAL

**HEARING OFFICER ORDER**

On May 8, 2015, the Illinois Environmental Protection Agency (Agency) filed a proposal to amend Parts 601, 602, and 603 of the Board's rules governing public water supplies (35 Ill. Adm. Code 601, 602, 603). On May 21, 2015, the Board accepted the Agency's proposal for hearing. By order of May 26, 2015, the hearing officer scheduled the first hearing for Thursday, July 2, 2015, in Chicago. The order also set deadlines of Tuesday, June 2, 2015, to pre-file testimony for the hearing and Thursday, June 25, 2015, to pre-file written questions based on pre-filed testimony.

On Thursday, May 28, 2015, the Agency timely pre-filed the testimony of witnesses Mr. David McMillan and David C. Cook.

The Board and its staff have reviewed the Agency's proposal and the pre-filed testimony. The Board poses questions based on those filings that are filed with this order as Attachment A. The Board directs the Agency to prepare to respond to them at the first hearing on July 2, 2015. The Board may raise follow-up or other questions in the course of the hearing.

IT IS SO ORDERED.

  
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## Attachment A to Hearing Officer Order of June 25, 2015

### QUESTIONS FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

#### General Questions

1. The pre-filed testimony of Agency witness David McMillan (McMillan Test.) states that updating the Board's regulations on public water supplies as proposed here by the Illinois Environmental Protection Agency (Agency) is "the first step in a more concise and understandable framework for ensuring the protection of Illinois water consumers." McMillan Test. at 1. Has the Agency planned an overall or larger framework to achieve the stated goal? If so, please describe the next steps after this rulemaking.
2. Mr. McMillan's pre-filed testimony also maintains that "making the proposed revisions . . . is more necessary than ever in advancing health protection through increasing regulatory discernment without cost to Illinois tax payers." McMillan Test. at 2. Please explain how the proposed amendments would, in the Agency's view, advance the identified objectives.
3. The pre-filed testimony of Agency witness David Cook (Cook Test.) describes the Agency's proposed amendments regarding water supply permitting. Cook Test. at 1-6.
  - a. To what extent can regulated entities file any of the required permit application documents electronically with the Agency? Please describe any plans the Agency has to move to wholly electronic submission and evaluation of permit applications.
  - b. To the extent that any of the proposed rules require submission of forms maintained by the Agency, please provide the forms for inclusion in the record.
4. The Agency states that it conducted outreach beginning in spring 2013 that led to two revisions of the proposed rules ultimately filed with the Board. Statement of Reasons (SR) at 29. Please describe any substantive changes made to the draft rules in the two rounds of revision and the stakeholder comments that led to the changes. Were any substantive changes made to the Agency's proposal between the last outreach, in fall 2014, and the filing of the proposal with the Board? If so, please describe the changes.

#### Questions on Specific Provisions

##### Section 601.104      Analytical Testing

5. Please clarify whether the phrase "these rules and regulations" in subsection (a) means rules and regulations under 35 Ill. Adm. Code Subtitle F. If so, would it be acceptable to amend subsection (a) as follows:
  - a) To determine compliance with these public water supplies rules and regulations under 35 Ill. Adm. Code Subtitle F, all sampling, monitoring and testing ~~and physical~~,

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chemical, bacteriological, and microscopic analyses shall be made according to the methods described in 35 Ill. Adm. Code 611, the National Primary Drinking Water Regulations (40 CFR 141) and any other method specifically approved by the Environmental Protection Agency (Agency).

### **Section 601.105**      **Definitions**

6. The proposed definition of “Aquifer property data” refers to several aquifer hydraulic properties. The Illinois Environmental Protection Agency (Agency) has proposed defining each of the aquifer properties in this section, except for “head.” Please comment on whether a definition of “head” or “hydraulic head” should be added to Section 601.105.
7. Since the term “cross-connection” is not used in the substantive portions of the proposed amendments to Parts 601, 602 and 603, please clarify whether the proposed definition of “cross-connection” is intended to address the cross-connection provisions under 35 Ill. Adm. Code 607.104. If so, please comment on whether the proposed definition has any implications for the scope of the cross-connection provisions under Section 607.104.
8. Several definitions are proposed to be deleted since they are not used in the Agency’s proposal. SR at 9. Please clarify whether any of the deleted terms are used in other parts of Subtitle F regulations. If so, please comment on whether the Board should retain such definitions.

### **Section 602.103**      **Public Water Supply Capacity Development**

9. This section requires all new community water supplies (CWS) to demonstrate technical, financial, and managerial capacity consistent with federal Safe Drinking Water Act requirements and regulations adopted by the Agency. Please clarify whether the Agency has adopted regulations to implement this provision. If so, please provide a citation to the Agency rules.

### **Section 602.105**      **Standard of Issuance**

10. Subsection (a)(2) provides, “[t]he Agency shall not ~~issue grant~~ any construction or operating permit required by this Part unless the applicant submits adequate proof that the community public water supply facility conforms to the following design criteria.” Please clarify whether the applicant needs to demonstrate that the CWS facility conforms to any one of design criteria provided in subsections (a)(2)(A) through (a)(2)(D). If so, please propose appropriate changes to reflect that intent.
11. Subsection (b) requires an applicant to submit “proof that the application of the algicide or aquatic pesticide will not cause a violation of the Act, Board regulation, or Agency regulation.” Typically, a permit applicant is required to submit adequate proof that issuance of a permit will not cause a violation of the Environmental Protection Act (Act)

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or Board regulations. Please explain the rationale for including “Agency regulation” in subsection (b), and provide citations to the Agency regulation that addresses application of algicides or pesticides.

### **Section 602.106**      **Restricted Status**

12. The proposed amendments to subsection (b) require the Agency to publish a comprehensive list of CWS subject to restricted status on its “webpage.”
  - a. Please explain why the Agency proposes not to publish the Restricted Status List in the *Environmental Register*, and address whether the Agency would be willing to publish the list in both the *Environmental Register* as well as on the Agency’s website.
  - b. Please clarify whether the Agency currently maintains a “Restricted Status List” on its website. If so, provide the link to the existing list. Also, please address whether any existing restricted status list on the Agency website will be updated to comply with subsection (b).
  - c. Could this subsection refer to the Agency’s “website” rather than “webpage” to be consistent with references to the website in other Board regulations?

### **Section 602.107**      **Critical Review**

13. Please clarify whether the Agency currently maintains a “Critical Review List.” If so, please provide the website address for the existing list. Does the existing list address CWS or sewage treatment plants? If the existing list addresses sewage treatment plants, please explain how the Agency plans to distinguish the CWS Critical Review List from the existing list.
14. Subsection (a) states that “approaching the point of violation shall include, but not be limited to, exceeding 80 percent of the rate of any of the quantity regulations used to make a restricted status determination, a pressure violation that only affects a small portion of a distribution system, a violation of duplicate unit requirements, or a failure to provide an emergency power source.” Please clarify whether listing a CWS with violations of minimum pressure, duplicate unit requirement, or failure to provide emergency power source on a Critical Review List is consistent with the requirements of Section 602.106. Could the Agency propose changes to the language of this section to avoid reliance on a violation of Board regulations to trigger placement on the Critical Review List?
15. Please clarify whether the Agency will limit the availability of permits to CWS on the Critical Review List.

**Attachment A to Hearing Officer Order of June 25, 2015****Section 602.108**      **Right of Inspection**

16. Several provisions under this section allow the Agency to conduct its inspection activities at “reasonable times.” Please clarify whether “reasonable times” as used in this section means during operational hours.

**Section 602.111**      **Application Forms and Additional Information**

17. This section states that the Agency may prescribe the permit application form for CWS. Please indicate if the Agency has prescribed permit application forms for CWS.

**Section 602.112**      **Filing and Final Action by Agency on Permit Applications**

18. Subsections (a)(1) and (b)(1) require the Agency to send the applicant a written notification of receipt of the “complete” application. Please clarify whether the Agency will review the application to determine if the application is complete, and whether the Agency will notify the applicant if it determines that the application is incomplete.

**Section 602.215**      **Submission of Applications, Plans and Specifications**

19. Subsection (b) provides that “permit applications shall be mailed or delivered to the appropriate address designated by the Agency.” Please clarify whether the mailing address will be designated on any application forms developed by the Agency or on the Agency’s website. If not, please provide the mailing address for inclusion in the rule.

**Section 602.225**      **Engineer’s Report**

20. This section requires an Engineer’s Report to be submitted upon the Agency’s request.
- a. Please clarify whether the Agency will request an Engineer’s Report after the receipt of the application for construction permit.
  - b. Would certain types of construction activities always require the construction permit application to include an Engineer’s Report? If so, should the rules specify those types of construction activities?
  - c. Please comment on whether the Engineering Report must include a professional engineer’s seal and signature consistent with Section 602.105(a)(3).
  - d. Please provide any estimates the Agency has of the cost of obtaining an Engineering Report for different types of construction activities.
21. Please clarify whether “waterworks,” as used in this section, refers to the CWS. If so, would it be acceptable to the Agency to replace “waterworks” with “community water supply,” since “waterworks” is not defined?

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### **Section 602.230      Design Criteria**

22. Subsection (d) requires “the estimated average and maximum day water demands for the design period.” Please clarify whether “maximum day” should be “maximum daily.”
23. Please comment on whether the design criteria must be prepared by a professional engineer consistent with Section 602.105(a)(3).

### **Section 602.235      Specifications**

24. In subsection (c), please clarify whether the reference to “the requirements of Section 602.105” refers to the design criteria listed in Section 602.105(a)(2). If so, should the proposed rule cite to that subsection?

### **Section 602.250 & 255   Treatment Construction and Storage Construction Applications**

25. These sections require the applicant to submit information concerning construction of treatment and storage facilities “on plans” only. Please comment on whether the Agency would need any other information as part of the application similar to source or water main construction applications.

### **Section 602.405      Algicide Permit Application**

26. Subsection (a) requires applications for algicide permits to contain “the name and identification number of the Responsible Operator in Charge supervising the application of the copper sulfate, copper sulfate based products, or copper sulfate chemical aids.”
  - a. Please clarify whether the algicide permit provisions apply only to the application of algicide under the supervision of the Responsible Operator In Charge. If not, please explain the intent of this subsection.
  - b. Please clarify whether the types of algicide application allowed under this Subpart D are limited to copper sulfate based products. If not, would it acceptable to the Agency to add the term “algicide” to subsection (a) as in Section 602.400(a)?
27. Subsection (j) requires that the application include “adequate information to support exceeding the limits as stated in 35 Ill. Adm. Code 302: Water Quality Standards.” Please clarify whether algicide application can result in exceedence of any water quality standards or criteria under Part 302.

### **Section 602.410      Sampling**

28. Subsection (b) specifies that “[t]he sample results must demonstrate that concentrations of copper do not pose a high health risk to water consumers.”

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- a. Please clarify whether the demonstration under subsection (b) is limited to copper based algicide products only.
- b. Please address how the Agency defines a “high health risk” for purposes of this subsection.
- c. Please comment on the criteria that will be used to demonstrate that copper concentrations do not pose a “high health risk” to water consumers.

**Section 602.500      Other Aquatic Pesticide Permit Requirements**

29. Subsection (a) prohibits the application of “an aquatic pesticide, other than an algicide, copper sulfate, copper sulfate based products, or copper sulfate chemical aids to any stream, reservoir, lake, pond or other body of water used as a community water supply source without an Aquatic Pesticide Permit issued by the Agency, where the application of the pesticide will have an effect on any community water supply. Effect shall be defined as any measurable concentration of the pesticide in the intake water of the community water supply.”
  - a. Please clarify whether this provision applies to CWS regardless of the upstream distance to the aquatic pesticide application location.
  - b. Please explain how this provision will be implemented to ensure protection of the CWS.
  - c. Regarding the definition of “effect,” please clarify whether “measurable concentration” means detection of the pesticide in the intake water.
30. Please clarify whether “public or food processing water supply intake,” as used in subsection (b), includes CWS intake.

**Section 602.505      Other Aquatic Pesticide Permit Application Contents**

31. Subsection (g) requires documentation showing notifications of all water supplies described in Section 602.500 along with the names of water supply operators who will be notified 24 hours before pesticide application. Please clarify whether operators of all water supplies described in Section 602.500 must be notified 24 hours prior to aquatic pesticide application. If not, please identify the water supply operators who must be notified 24 hours before pesticide application.

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### **Section 602.520**      **Extension of Permit Duration**

32. In subsection (c), would it be acceptable to the Agency if “two months” were replaced by “60 days”?

### **Section 603.102**      **Administrative Contact**

33. Does this section require a CWS to designate an Administrative Contact? In addition, please clarify whether the Administrative Contact would have authority to act on behalf of the CWS in all aspects of its operations, or only with respect to administrative matters.
34. Should “Administrative Contact” be included in the definitions section (Section 601.105)? If so, please propose an appropriate definition to include in that section.
35. Please clarify whether the phrase “the agency relationship no longer exists” in the last sentence of this section means that the designated agent is no longer the Administrative Contact of the CWS. If so, please propose language changes to reflect the intent of this section.

### **Section 603.103**      **Responsible Operator In Charge**

36. Quoting Section 1.1(a) of the Public Water Supply Operations Act (415 ILCS 45/1.1(a)), proposed Section 603.103(f) provides that a designated Responsible Operator in Charge (ROINC) is “jointly accountable with the owner of the [CWS] for the proper operation of the portions of the [CWS] over which he or she has been designated as the [ROINC].” Please address whether, in the Agency’s view, this joint accountability means that the ROINC, along with the CWS owner, is jointly and severally liable for major failure or other operational problems.