

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

APR 7 2003

STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF:

AMENDMENTS TO 35 ILL. ADM. CODE  
602.105, 602.106, 602.108, and 602.115

)  
)  
) R03-21  
) (Rulemaking - Public Water Supplies)  
)

NOTICE OF FILING

Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
Suite 11-500  
James R. Thompson Center  
100 West Randolph Street  
Chicago, Illinois 60601

Matthew Dunn, Chief  
Environmental Enforcement Division  
Illinois Attorney General's Office  
James R. Thompson Center  
100 West Randolph Street  
Chicago, Illinois 60601

Office of Legal Services  
Department of Natural Resources  
One Natural Resources Way  
Springfield, Illinois 62702-1271

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the **ILLINOIS EPA REGULATORY PROPOSAL, MOTION FOR ACCEPTANCE, AND APPEARANCE** of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Joey Logan-Wilkey  
Joey Logan-Wilkey  
Assistant Counsel  
Division of Legal Counsel

DATED: April 4, 2003

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

THIS FILING PRINTED ON RECYCLED PAPER

ORIGINAL

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OF THE STATE OF ILLINOIS

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MOTION FOR ACCEPTANCE

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its attorney, Joey Logan-Wilkey, and pursuant to 35 Ill. Adm. Code 102.200 and 102.202, moves that the Illinois EPA accept for hearing the Illinois EPA's proposal for amendments to 35 Ill. Adm. Code 602.105, 602.106, 602.108, and 602.115. This regulatory proposal includes:

1. Notice of Filing;
2. Appearance of Vera Herst, Attorney for the Illinois EPA;
3. Appearance of Joey Logan-Wilkey, Attorney for the Illinois EPA;
4. Director Renee Cipriano's Proposal of Regulations;
5. Certification of Origination;
6. Statement of Reasons;
7. Notice of Proposal and Proposed Amendments;
8. Computer diskette containing Notice of Proposal and Proposed Amendments; and
9. Proof of Service.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Joey Logan-Wilkey

Joey Logan-Wilkey  
Assistant Counsel  
Division of Legal Counsel

DATED: April 4, 2003

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
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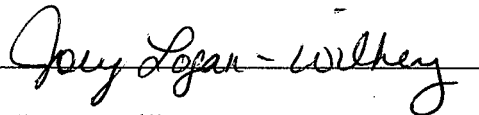
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R03-21  
(Rulemaking - Public Water Supplies)

**APPEARANCE**

The undersigned, as one of its attorneys, hereby enters her **APPEARANCE** on behalf of the  
Illinois Environmental Protection Agency.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: 

Joey Logan-Wilkey  
Assistant Counsel  
Division of Legal Counsel

DATED: April 4, 2003

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R03- 21  
(Rulemaking - Public Water Supplies)

APPEARANCE

The undersigned, as one of its attorneys, hereby enters her APPEARANCE on behalf of the  
Illinois Environmental Protection Agency.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Vera Herst

Vera Herst  
Assistant Counsel  
Division of Legal Counsel

DATED: April 4, 2003

Illinois Environmental Protection Agency  
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P.O. Box 19276  
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**ILLINOIS EPA PROPOSAL OF REGULATIONS**

Pursuant to Section 27 of the Illinois Environmental Protection Act (415 ILCS 5/27), the Illinois Environmental Protection Agency hereby moves that the Illinois Pollution Control Board adopt the attached proposed amendments to regulations.

Respectfully submitted,  
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By:

  
Renee Cipriano  
Director

DATED: \_\_\_\_\_

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF:

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R03- 21

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(Rulemaking - Public Water Supplies)

AMENDMENTS TO 35 ILL. ADM. CODE

)

602.105, 602.106, 602.108, and 602.115

)

**CERTIFICATION OF ORIGATION**

NOW COMES the Illinois Environmental Protection Agency to certify in accordance with 35 Ill. Adm. Code 102.202(h) that this proposal amends the most recent version of 35 Ill. Adm. Code Part 602.105, 602.106, 602.108, and 602.115, as published on the Illinois Pollution Control Board's World Wide Website.

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Joey Logan-Wilkey

Joey Logan-Wilkey  
Assistant Counsel  
Division of Legal Counsel

DATED: April 4, 2003

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF:

AMENDMENTS TO 35 ILL. ADM. CODE )  
602.105, 602.106, 602.108, and 602.115 )  
(Rulemaking Public Water Supplies)

STATEMENT OF REASONS

The Illinois Environmental Protection Agency ("Illinois EPA") hereby submits this Statement of Reasons under Section 27 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/27 (2002) and 35 Ill. Adm. Code 102.121(b) in support of the attached proposal of amendments to Subtitle F: Public Water Supplies regulations of the Illinois Pollution Control Board's ("Board") Regulations, 35 Ill. Adm. Code 602.105 and 602.106.

**I. Statement of Fact Supporting Proposals:**

The Illinois EPA's proposal offers a set of amendments to 35 Ill. Adm. Code 602, the Permits regulations of Subtitle F. A detailed explanation of the substantive amendments follows.

**A. Standards of Issuance and Restricted Status**

The Illinois EPA proposes that the Board consider amendments to the exemptions of the standards of issuance and restricted status requirements of 35 Ill. Adm. Code 602.105 and 602.106. These exemptions currently provide relief to public water supplies ("PWS") that exceed the maximum contaminant levels ("MCL") for radium-226 and radium-228 of 5 pico curies per liter ("pCi/L") ("combined radium") and the gross alpha particle activity ("gross alpha") of 15 pCi/L. These exemptions will expire on the effective date of the final radionuclide standard, December 8, 2003. The Illinois EPA is requesting that the Board amend 35 Ill. Adm. Code 602.105 and 602.106, before those exemptions expire, to continue to provide the exemptions from Restricted Status<sup>1</sup> to PWS

<sup>1</sup> "Restricted Status" as stated in 35 Ill. Adm. Code 602.106, authorizes the Illinois EPA to identify those public water supplies that may no longer be issued a construction permit without causing a violation of the

that are under enforceable court orders or Compliance Commitment Agreements executed pursuant to Section 31 of the Act that include a schedule for compliance with the combined radium, gross alpha, and uranium MCLs.

The proposed amendments address the exemptions of the standards of issuance and restricted status requirements as the Board rules apply to the recently adopted radionuclide amendments to Section 611.330 of Subtitle F (*In The Matter Of: SDWA Update: USEPA Amendments, (July 1, 2000 through December 31, 2000) R01-20, October 10, 2001*). The proposed amendments would provide relief from the standards of issuance and restricted status requirements of the Board rules, 35 Ill. Adm. Code 602.105 and 602.106. The Illinois EPA is not requesting a variance from the Board's radionuclide rule.

As the principal part of *In The Matter Of: Amendments to 35 Ill. Adm. Code Subtitle F (R96-18)*, May 1, 1997, the Board considered and adopted amendments to 35 Ill. Adm. Code 602.105 and 602.106 to exempt Illinois PWS exceeding the combined radium and gross alpha particle activity MCL from the Board's restricted status and standards of issuance requirements. The Board was prompted to provide such relief because of unusual delays in promulgating the federal combined radium standard as part of the radionuclide rule. In its opinion and order, the Board stated:

The current standards [combined radium and gross alpha] are National Interim Primary Drinking Water Regulations adopted in 1976. As interim standards they are under review by the USEPA, and have been for some time. Indeed, USEPA has had pending since 1991 a proposal to adopt final regulations in which the radium standards would increase to 20 pCi/L for each of the two radium isotopes (56 Fed. Reg. 33050, July 18, 1991). Public hearings on the proposed federal standard began on September 6, 1991. In an amended consent order in *Miller v. Browner*, (No. 89-6328HO (Dist OR 1990), amended February 22, 1994), the federal district court for Oregon ordered the USEPA to take final action on the radionuclide rule with respect to radium-226 and radium-228 standards by no later than April 30, 1995. However, Congress prohibited funding during 1994 and 1995, necessary for the promulgation of a radon standard. Since radon was a part of the radionuclide proposal, no standards for radium-226 and radium-

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Illinois Environmental Protection Act, 415 ILCS 51 *et seq.* or Subtitle F. The Illinois EPA is also required to maintain and periodically publish the list of supplies that are on Restricted Status.



228 were adopted. USEPA has proposed a modification to the Miller v. Browner consent order; however, it has not committed to a time for developing a new promulgation schedule. If the proposed federal standard is adopted, almost no public water supply in Illinois would exceed the radium standard. Today's amendments [to the standards of issuance and restricted status requirements] allow public water supplies to continue to operate, without the construction permit ban (or need to seek a variance from the ban), pending final action by USEPA.

*In The Matter Of: Amendments To 35 Ill. Adm. Code Subtitle F (Parts 601 through 620), R96-18 (May 1, 1997), pp. 6-7.*

The Board also recognized that from 1991 through 1997, the Illinois EPA placed 69 PWS on restricted status for exceeding the 5 pCi/L combined radium MCL or the 15 pCi/L gross alpha MCL. The placement of PWS on restricted status prevented the PWS from obtaining construction and operating permits to expand their systems unless the PWS petitioned the Board for a variance from the standards of issuance and restricted status requirements. Prior to the amendments of R96-18, May 17, 1997, the Board had issued 134 variances from restricted status for 83 PWS with exceedences of the 5 pCi/L combined radium MCL or the 15 pCi/L gross alpha particle activity MCL. *Id* at 7.

Mindful of the USEPA's delay in promulgating a final radionuclide standard, the Board adopted exemptions in 35 Ill. Adm. Code 602.105 and 602.106 for PWS that were in violation of the 5 pCi/L combined radium MCL and the 15 pCi/L gross alpha particle activity MCL, but did not exceed the then proposed 20 pCi/L standard for each isotope of radium. The Board adopted the exemptions from the standards of issuance and restricted status requirements for those PWS until the effective date of the radionuclide rule as promulgated by USEPA or at the time of withdrawal of the proposed 20 pCi/L MCL for each isotope of radium by USEPA.

On December 7, 2000, USEPA finalized the revisions to the 1976 radionuclide rule. The revised regulations retained the existing MCL of 5 pCi/L for the combined radium MCL and 15 pCi/L MCL for gross alpha. The rule defined "combined radium" as the sum of analytical results for radium-226 (pCi/L) and radium-228 (pCi/L) and established a 30 pCi/L MCL for uranium. "Gross alpha" was defined as the total activity from all alpha-emitting particles and compliance was based on the adjusted gross alpha, which is gross alpha minus total uranium. USEPA established the effective date for the

final radionuclide rules as December 8, 2003, and thus set the expiration date for the standards of issuance and restricted status exemptions of 35 Ill. Adm. Code 602.105 and 602.106 for Illinois PWS that exceeded the combined radium and gross alpha MCL of the radionuclide rule. On October 4, 2001, the Board adopted the standards of the radionuclide rule as part of *In The Matter Of: SDWA Update, USEPA Amendments (July 1, 2000 through December 31, 2000,) R01-20 (October 4, 2001)*, and thus incorporated into the Board regulations the December 8, 2003 compliance date of the radionuclide rule and the deadline date for all Illinois PWS.

In early 2001, the Illinois EPA began notifying the approximately 113 Illinois PWS that exceed the 5 pCi/L combined radium MCL and the 15 pCi/L gross alpha MCL. In September and October 2001, the Illinois EPA set up meetings throughout the State with PWS to identify the noncompliance, and to discuss the alternative methods of achieving compliance with the radionuclide rule by December 8, 2003, including, but not limited to blending, lime softening, ion exchange, reverse osmosis, and connecting to an alternate water source. During the meetings with the PWS that exceeded the combined radium and gross alpha particle activity MCLs, the Illinois EPA offered each PWS the opportunity to enter into a Radionuclide Compliance Commitment.

A Radionuclide Compliance Commitment is a commitment by the PWS to achieve compliance with the radionuclide rule by December 8, 2003. In an acceptable Radionuclide Compliance Commitment, the PWS commits to hiring a registered professional engineer to prepare a Compliance Report within six months. The Compliance Report must identify the compliance options investigated by the PWS, the basis for the chosen treatment option, a detailed compliance schedule, the estimated cost and the source of funding for the project. Once the PWS has signed a Radionuclide Compliance Commitment and has submitted a Compliance Report, the Illinois EPA suspends the pre-enforcement notice initiatives under Section 31 of the Act, 415 ILCS 5/31 (2002).

On August 1, 1996, the Illinois General Assembly enacted PA 89-56, establishing formal violation notice procedures, and meeting and written response requirements for the "person complained against" and the Illinois EPA. These pre-notice requirements must be met before the Illinois EPA may institute formal enforcement processes. An

essential component of this pre-enforcement process is the opportunity for the “person complained against” to respond and to commit to a compliance program for addressing the alleged violations through a Compliance Commitment Agreement (CCA). The person complained against may respond with a CCA after receiving a violation notice or after the meeting with the Illinois EPA. In response to the alleged violations, Section 31 allows the person complained against to submit a CCA that, “includes specific times for achieving each commitment,” 415 ILCS 31(a)(2)(B) and (a)(5)(B) (2002). The CCA must then be reviewed and either rejected or approved by the Illinois EPA.

The Board is familiar with enforceable compliance schedules of judicial consent orders and with the administrative documents required by the pre-enforcement notice, meeting and written response requirements of Section 31 of the Act. As part of the pre-enforcement process of the radionuclide rule, the PWS may sign a CCA with a compliance schedule that will be effectively monitored by the Illinois EPA. If the PWS meets the compliance dates in the CCA, it will demonstrate that it is working in good faith to achieve compliance.

Of the 113 PWS not in compliance with the radionuclide rule, the Illinois EPA reports the following progress:

- twelve facilities have returned to compliance;
- 80 facilities have signed Radionuclide Compliance Commitments;
- 74 of the 80 facilities with Radionuclide Compliance Commitments have submitted Compliance Reports;
- 43 of the 74 facilities with Compliance Reports have been approved for construction;
- five facilities are currently under construction; and
- five facilities have completed construction and are doing compliance monitoring.

The Illinois EPA anticipates that approximately 50 to 60 Illinois PWS may fail to meet the December 8, 2003 deadline of the radionuclide rule and be subject to the pre-enforcement and notice processes of Section 31 of the Act, 415 ILCS 5/31 (2002).

Once the Illinois EPA has identified a PWS as being unable to comply with the December 8, 2003 deadline of the radionuclide rule, the Illinois EPA will send the PWS a violation notice (“VN”) to initiate the pre-enforcement notice and enforcement process under Section 31 of the Act. As part of the Section 31 pre-enforcement meetings, the

Illinois EPA is required to offer the PWS the opportunity to propose a CCA, which includes a compliance schedule. Rather than proceeding with formal enforcement, the Illinois EPA may use its authority under Section 31 of the Act to approve CCAs for PWS that demonstrate a willingness to achieve compliance consistent with the deadline of the radionuclide rule.

The Illinois EPA believes that PWS in noncompliance with the radionuclide rule who have not committed to acceptable compliance schedules should not be given an exemption from the standards of issuance and restricted status requirements. However, the Illinois EPA believes that those PWS that have submitted acceptable CCAs or have entered into enforceable consent orders, and are in compliance with all the milestones of the compliance schedule required by those CCAs or consent orders, should be provided relief from 35 Ill. Adm. Code 602.105 and 602.106 to allow the Illinois EPA to issue necessary permits without the need for variance relief from the Board.

For those PWS facilities in violation of the radionuclide rule that have not committed to a compliance schedule or with schedules that do not propose timely compliance with the radionuclide rule, the Illinois EPA will reject proposed CCAs and will refer those PWS to the Office of the Attorney General for formal enforcement. The Office of the Attorney General will then provide those PWS with the opportunity to enter into consent orders containing compliance schedules and monetary penalties.

In R96-18, May 1997, the Board determined that the exemptions of 35 Ill. Adm. Code 602.105 and 602.106 were necessary to address extraordinary delays by USEPA in promulgating the radionuclide rule. The Board found that the noncomplying PWS had been placed on restricted status, thus banning the PWS from extending or expanding their facilities unless the PWS petitioned the Board for variance relief from the standards of issuance and restricted status requirements.

If the Board were to allow the current exemptions of 35 Ill. Adm. Code 602.105 and 602.106 to expire on December 8, 2003 without amendment, the noncomplying PWS facilities would be required to seek individual variances for extension or expansion of their PWS facility. In R96-18, May 17, 1997, the Board recognized that the variance process was costly for the regulated community and expended both Illinois EPA and

Board resources. *In The Matter Of: Amendments To 35 Ill. Adm. Code Subtitle F* (Parts 601 through 620), R96-18 (May 1, 1997), pp. 7, 9.

Accordingly, the Illinois EPA proposes that the Board amend 35 Ill. Adm. Code 602.105 and 602.106 to limit the exemptions to those PWS that have entered into a CCA executed under Section 31 of the Act or a consent order containing an enforceable compliance schedule.

**B. Construction Permit Applications**

The Illinois EPA requests that the Board amend 35 Ill. Adm. Code 602.108 to require that each person signing the construction permit application certify that the application is complete and accurate. Applicants often electronically transcribe permit applications into the data base of their computer systems to facilitate completion of the applications. The Illinois EPA does not wish to restrict the transfer of the permit application text to their computer systems, so long as the text is not changed and those signing the application will certify that the text has not been changed or altered from the original permit application format. The construction permit application used by the Illinois EPA's Division of Public Water Supplies provides for and requires the signatures of the following three separate entities:

- 1) the applicant, including the PWS, the contractor, the developer, or the trustee of a land trust;
- 2) the engineer or the architect registered to practice in Illinois; and
- 3) the owner or official custodian of the public water supply.

As proposed, each person required to sign the construction permit application would be required to certify that the information in the permit application is complete and accurate. The reference to the "best of my knowledge" has been removed because the Illinois EPA requires that the certification must be an unqualified certification that the material submitted in the construction permit application is information that the Illinois EPA may rely on as being complete and accurate. The Illinois EPA has provided the Board with copies of permit applications to facilitate their review of this proposed amendment.

C. References to Technical Policy Statements in 35 Ill. Adm. Code 602.115

The Illinois EPA also proposes that the Board update the reference in 35 Ill. Adm. Code 602.115 to 35 Ill. Adm. Code 651 through 654, the Illinois EPA's public water technical and design criteria. In July 1999, the Illinois EPA amended 35 Ill. Adm. Code 651 through 654 and changed the reference from the Agency Technical Policy Statements to the Agency Rules for Public Water Supplies. The amendments were published in the *Illinois Register*, 23 Ill. Reg. 8982, effective July 29, 1999. The Illinois EPA requests that Board amend such references in 35 Ill. Adm. Code 602.115 to reflect these changes.

**II. Purpose and Effect of Proposal:**

A. Standards of Issuance and Restricted Status

Providing exemptions from the provisions of 35 Ill. Adm. Code 602.105, Standards of Issuance, and 35 Ill. Adm. Code 602.106, Restricted Status, to PWS that have entered into CCAs or consent orders will allow those PWS to expand their facilities while installing treatment for radionuclides or otherwise achieving compliance with the radionuclide standard. Unless the Board amends these exemptions to extend beyond the December 8, 2003 effective date of the final radionuclide rule, all PWS whose compliance schedules extend beyond that date would be required to seek relief in the form of individual variances from the Board in order to receive Illinois EPA permits for expansion.

Between 1977 and 1997, the Board issued 134 variances from restricted status for 83 PWS that exceeded the 5 pCi/L combined radium standard. Absent these amendments extending the exemptions from standards of issuance and restricted status, the Illinois EPA estimates that 50 to 60 PWS would seek Board variances from restricted status while working to install radionuclide treatment or otherwise achieve compliance.

The variance process is costly not only for the Board and Illinois EPA, but also for the regulated community. These proposed amendments will provide these PWS with relief from the need to obtain a variance while installing costly treatment for radionuclides. Adoption by the Board of these amendments to 35 Ill. Adm. Code 602.105 and 602.106 will obviate the need for and costs of obtaining variances from restricted status for an estimated 50 PWS. Because only the PWS who have entered into CCAs or consent orders requiring date-certain compliance with the radionuclide standard

will qualify for these exemptions, and the Illinois EPA will continue to enforce the federal radionuclide standards, the State of Illinois will not be subject to loss of its primary enforcement responsibility under the Safe Drinking Water Act.

B. Construction Permit Applications

Amending 35 Ill. Adm. Code 602.108 to require that each person signing the construction permit application certify that the application is complete and accurate will allow the Illinois EPA to accept construction permit applications from public water supplies with the confidence that the submittal is complete and accurate, and that the text has not been altered. This will allow the applicant to prepare and store a template of the Illinois EPA Division of Public Water Supplies construction permit application in its computer system to facilitate the completion of future permit applications.

C. References to Technical Policy Statements in 35 Ill. Adm. Code 602.115

The purpose of amending 35 Ill. Adm. Code 602.115 is to have the Board rules reflect the change previously made to the Agency rules. The Board rules still refer to the Design, Operation, and Maintenance Criteria for PWS as “Technical Policy Statements,” while the Agency rules located at 35 Ill. Adm. Code 651-654 refer to that criteria as “Agency Rules for Public Water Supplies.” The proposed amendment to 35 Ill. Adm. Code 602.115 will update the Board rules to reflect this change to the Agency rules for PWS.

**III. Technical and Economic Justification:**

A. Technical Justification

The Illinois EPA is not proposing any technical changes for this rulemaking.

B. Economic Justification

The proposed amendments will result in a continued cost savings for the regulated community, as they will not incur the expense of going through the variance process for radium violations while they are completing their compliance measures. The Illinois EPA and the Board will also continue to save the time that would otherwise be invested in proceedings for radionuclide variances. Continuing the exemption from restricted status for PWS that are seeking compliance will have little or no impact on the safety of the drinking water that is provided by these PWS. The Illinois EPA does not anticipate

that the other proposed amendments will have any economic impact on the regulated community, or on the Board or the Illinois EPA.

**IV. Communication with Interested Parties:**

During state-wide meetings with the regulated community in October of 2001, the Illinois EPA received inquiries regarding restricted status. Since that time, representatives of various public water supplies have requested continuing exemptions from restricted status until they are able to meet the radionuclide standard. The Illinois EPA has requested an estimate on the cost of completing the variance process from members of the regulated community, and will provide that information to the Board at a later date.

**V. The Agency's Proposal:**

The following is a section by section summary of the Illinois EPA's proposal.

**35 Ill. Adm. Code 602.105**

The proposal amends this section to allow the Illinois EPA to issue permits to PWS that are not in compliance with the final radionuclide rule but are under a consent order or CCA that requires date-certain compliance with the radionuclide rule.

**35 Ill. Adm. Code 602.106**

The proposal amends this section to extend the exemption from restricted status to PWS that are not in compliance with the final radionuclide rule but are under consent orders or CCAs that requires date-certain compliance with the radionuclide rule.

**35 Ill. Adm. Code 602.108**

The proposal amends this section to require that each person signing the construction permit application certify that the application is complete and accurate, and that the text of the application has not been altered.

**35 Ill. Adm. Code 602.115**

The proposal amends this section to update the reference in 35 Ill. Adm. Code 602.115 to 35 Ill. Adm. Code 651 through 654, the Illinois EPA's public water technical and design criteria, from the Agency Technical Policy Statements to the Agency Rules for Public Water Supplies.



**VI. Synopsis of Witness Testimony:**

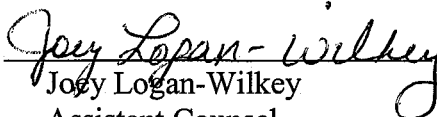
During the Board's proceedings in this matter, the Illinois EPA will present two witnesses in support of the proposed rulemaking, Jerry Kuhn and Michael Crumly. Jerry Kuhn is the Manager of the Permits Section of the Division of Public Water Supplies. His duties include managing the review of permit applications submitted by public water supplies to assure that proposed construction meets acceptable design criteria in accordance with federal Safe Drinking Water Act, the Illinois Environmental Protection Act, and the Board regulations governing public water supplies. Mr. Kuhn has been with the Illinois EPA for twenty-two years and is a licensed professional engineer. Mr. Kuhn will submit testimony regarding the Restricted Status and Standards of Issuance regulations, and the need for requiring applicants to certify that permit applications are complete and accurate.

Michael Crumly is the Manager of the Drinking Water Compliance Unit of the Compliance Section of the Bureau of Water. His duties include overseeing and assisting water systems to comply with state and federal regulations. Mr. Crumly has been with the Illinois EPA for fifteen years. He is a biologist by training. He will testify to the Illinois EPA's implementation of the final radionuclide rule.

**VII. Conclusions:**

The Illinois EPA recommends that the Board adopt the proposed amendments as enumerated above as expeditiously as possible.

Respectfully submitted,  
Illinois Environmental Protection Agency

By:   
Joey Logan-Wilkey  
Assistant Counsel  
Division of Legal Counsel

DATED: \_\_\_\_\_  
1021 N. Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
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ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of Part: Permits
- 2) Code Citation: 35 Ill. Adm. Code 602
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
602.105	Amendment
602.106	Amendment
602.108	Amendment
602.115	Amendment

- 4) Statutory Authority: 415 ILCS 5/17 and 27

- 5) A Complete Description of the Subjects and Issues Involved:

The proposed amendments to 35 Ill. Adm. Code 602.105 and 602.106 will allow the Illinois EPA to continue to issue permits for the expansion of drinking water facilities for public water supplies that are under enforceable court orders requiring compliance with the radionuclide rule.

The proposed amendments to 35 Ill. Adm. Code 602.108 require that each person signing the construction permit application certify that the application is complete and accurate. This amendment will insure that there are no changes or omissions during the electronic production of permit applications by applicants.

The proposed amendments to 35 Ill. Adm. Code 602.115 changes the references to the Agency Technical Policy Statements to the Agency Rules for Public Water Supplies to reflect the July 1999 amendments to 35 Ill. Adm. Code 651 through 654.

- 6) Will this proposed amendment replace an emergency amendment currently in effect?

\_\_\_ Yes X No

- 7) Does this rulemaking contain an automatic repeal date?

\_\_\_ Yes X No

- 8) Does this proposed amendment contain incorporations by reference?

\_\_\_ Yes X No

- 9) Are there any other proposed amendments pending on this part?

\_\_\_ Yes X No

- 10) Statement of Statewide Policy Objectives:

These proposed amendments are consistent with the policy objectives set out in the Environmental Protection Act, 415 ILCS 5/1 *et seq.*

ILLINOIS REGISTER

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

The Board will accept written comment on this proposal for a period of 45 days after the date of this publication. Comments should reference Docket R03- and be addressed to:

Ms. Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 West Randolph Street  
Springfield, Illinois 60601

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected:

Small public water supplies, including privately-owned and municipally-owned systems, will benefit from the proposed amendments, as they will continue to be eligible for permits for the expansion of their facilities provided that they have entered into a consent order or a Compliance Commitment Agreement requiring compliance with the radionuclide standard.

B) Reporting, book keeping or other procedures required for compliance:

No additional reporting or record keeping requirements are imposed beyond those necessary for compliance with the existing regulations.

C) Types of professional skills necessary for compliance:

No additional professional skills are required beyond those necessary for compliance with the existing regulations.

13) Regulatory Agenda on which this rulemaking was summarized:  
January 2003

The full text of the Proposed Amendments begins on the next page:

ILLINOIS REGISTER

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

**TITLE 35: ENVIRONMENTAL PROTECTION**

**SUBTITLE F: PUBLIC WATER SUPPLIES**

**CHAPTER I: POLLUTION CONTROL BOARD**

**PART 602**

**PERMITS**

**Section 602.105 Standards for Issuance**

- a) The Agency shall not grant any construction or operating permit required by this Part unless the applicant submits adequate proof that the public water supply will be constructed, modified or operated so as not to cause a violation of the Environmental Protection Act [415 ILCS 5].
- b) The Agency shall not grant any construction or operating permit required by this Part unless the applicant submits adequate proof that the public water supply facility conforms to the design criteria promulgated by the Agency under Section 39(a) of the Act or Section 602.115 or is based on such other criteria which the applicant proves will produce consistently satisfactory results.
- c) The Agency shall not grant any construction permit required by this Part unless the applicant submits proof that any plan documents required by this Section and Section 602.108 have been prepared by a person qualified under the Illinois Architecture Practice Act [225 ILCS 305], the Illinois Professional Engineering Practice Act [225 ILCS 325], the Illinois Structural Engineering Licensing Act [225 ILCS 340], or any required combination thereof.
- d) Until the effective date of either a National Primary Drinking Water Regulation for radium-226, radium-228, or gross alpha particle activity that replaces the National Interim Primary Drinking Water Regulations for these contaminants, adopted by USEPA on July 9, 1976, or the formal withdrawal of the proposed National Primary Drinking Water Regulations for these contaminants, as proposed by USEPA on July 18, 1991 (56 Fed. Reg. 33050), the Agency shall not deny for the following reasons any construction or operating permit required by this Part:
  - 1) the radium-226 level is less than or equal to 20 pCi/L;
  - 2) the radium-228 level is less than or equal to 20 pCi/L; or
  - 3) the gross alpha particle activity level minus the radium-226 level is less than or equal to 15 pCi/L.

This subsection applies until December 8, 2003.

- d) Effective December 8, 2003, the Agency may issue a construction or operating permit to a public water supply that exceeds the maximum contaminant level (MCL) for the combined radium standard (radium-226 and radium-228) of 5 pCi/L, the gross alpha particle activity of 15 pCi/L, or the MCL for uranium of 30 ug/L of 35 Ill. Adm. Code 611.330, provided that the supply has entered into a Compliance Commitment Agreement (CCA) executed pursuant to Section 31 of the Act or an enforceable court order for compliance with the combined radium, uranium, or the gross alpha particle activity standards.

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(Source: Amended at \_\_ Ill. Reg. \_\_\_\_, effective \_\_\_\_\_.)

**Section 602.106 Restricted Status**

- a) Restricted status shall be defined as the Agency determination, pursuant to Section 39(a) of the Act and Section 602.105, that a public water supply facility may no longer be issued a construction permit without causing a violation of the Act or 35 Ill. Adm. Code: Subtitle F this Chapter.
- b) The Agency shall publish and make available to the public at intervals of not more than six months, a comprehensive and up-to-date list of supplies subject to restrictive status and the reasons why.
- c) The Agency shall notify the owners or official custodians of supplies when the supply is initially placed on restricted status by the Agency.
- d) Until the effective date of either a National Primary Drinking Water Regulation for radium-226, radium-228, or gross alpha particle activity that replaces the National Interim Primary Drinking Water Regulations for these contaminants, adopted by USEPA on July 9, 1976, or the formal withdrawal of the proposed National Primary Drinking Water Regulations for these contaminants, as proposed by USEPA on July 18, 1991 (56 Fed. Reg. 33050), the Agency shall not place public water supplies on restricted status when:
  - 1) the radium-226 level is less than or equal to 20 pCi/L;
  - 2) the radium-228 level is less than or equal to 20 pCi/L; or
  - 3) the gross alpha particle activity level minus the radium-226 level is less than or equal to 15 pCi/L.

This subsection applies until December 8, 2003.

- d) Effective December 8, 2003, the Agency may not place a public water supply that exceeds the maximum contaminant level (MCL) for the combined radium standard (radium-226 and radium-228) of 5 pCi/L, the gross alpha particle activity of 15 pCi/L, or the MCL for uranium of 30 ug/L of 35 Ill. Adm. Code 611.330 on restricted status, provided that the supply has entered into a Compliance Commitment Agreement (CCA) executed pursuant to Section 31 of the Act or an enforceable court order for compliance with the combined radium, uranium, or the gross alpha particle activity standards.

(Source: Amended at \_\_ Ill. Reg. \_\_\_\_, effective \_\_\_\_\_.)

**Section 602.108 Construction Permit Applications**

All applications for any construction permit required under this Chapter shall contain, where appropriate, the following information and documents:

- a) A summary of the design basis;
- b) Operation requirements;

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POLLUTION CONTROL BOARD

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- c) General Layout;
- d) Detailed Plans;
- e) Specifications;
- f) A professional seal to satisfy Section 602.105 (c) requirements; ~~and~~
- g) Each person signing the construction permit application must certify that the information contained in the permit application is complete and accurate, and that the text of the permit application has not been altered or changed from the Agency's official permit application form; and
- ~~h)~~g) Any other information required by the Agency for proper consideration of the permit.

(Source: Amended at \_\_ Ill. Reg. \_\_\_\_, effective \_\_\_\_\_.)

**Section 602.115 Design, Operation, and Maintenance Criteria**

- a) The Agency may adopt criteria, published in the Agency Rules for Public Water Supplies ~~form of Technical Policy Statements~~, for the design, operation, and maintenance of public water supply facilities as necessary to insure safe, adequate, and clean water. These criteria shall be revised from time to time to reflect current engineering judgment and advances in the state of the art.
- b) Before adopting new criteria or making substantive changes to any Agency Rules for Public Water Supplies ~~Technical Policy Statements~~, the Agency shall comply with the provisions of the Administrative Procedure Act [5 ILCS 100].

(Source: Amended at \_\_ Ill. Reg. \_\_\_\_, effective \_\_\_\_\_.)

STATE OF ILLINOIS  
COUNTY OF SANGAMON

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**PROOF OF SERVICE**

I, the undersigned, on oath state that I have served the attached Notice of Filing the Illinois EPA Regulatory Proposal, Motion for Acceptance, and Appearance upon the person to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601

and mailing it from Springfield, Illinois on April 4, 2003, with sufficient postage affixed first class mail.

Jay L. Lapan-Wilkey

SUBSCRIBED AND SWORN TO BEFORE ME

this 4<sup>th</sup> day of April, 2003.

Brenda Boehner

NOTARY PUBLIC

