

July 30, 2015

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

2 ILLINOIS POLLUTION CONTROL BOARD
3 1021 North Grand Avenue East
4 North Entrance
5 Springfield, Illinois 60601
6 312-814-4925
7 marie.tipsord@illinois.gov
8 BY: MS. MARIE TIPSORD, HEARING OFFICER

6

7 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

8 Dr. Deanna Glosser, Board Member
9 Ms. Alisa Liu, Technical Unit

9

10 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
11 1021 North Grand Avenue East
12 P.O. Box 19276
13 Springfield, Illinois 62794-9276
14 217-782-5544
15 BY: MR. REX L. GRADELESS

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14 Appeared on behalf of the Petitioner.

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1 HEARING OFFICER TIPSORD: Well, I do have
2 1:00 o'clock, so if you guys are all ready, we'll get
3 started.

4 Good afternoon. My name is Marie Tipsord
5 and I've been appointed by the Board to serve as
6 Hearing Officer in this proceeding, entitled
7 Amendments to Primary Drinking Water Standards, 35
8 Ill. Adm. Code 611. The docket number is R15-23.

9 With me today to my immediate left is
10 Chairman Dr. Deanna Glosser, the Presiding Board
11 Member, and to my immediate right from our Technical
12 Unit is Alisa Liu.

13 The purpose of today's hearing is to hear
14 the testimony from the witness from the IEPA. After
15 that witness, if the time allows, we will allow
16 others to provide testimony or oral comments. If
17 you're not sure whether you would like to testify or
18 offer a comment, please see me at the break and we
19 can discuss your options.

20 The prefiled testimony today will be
21 marked as an exhibit and taken as if read. We will
22 then move to the questions prefiled by the Board.

23 IEPA did file a response to those
24 questions on Tuesday, which was given public comment

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1 number 7. We will have the Agency's witness read the
2 answers today in case there are any follow-ups.

3 Anyone may ask a question. However, I do
4 ask that you raise your hand, wait for me to
5 acknowledge you. After I have acknowledged you,
6 please state your name and who you represent before
7 you begin your questions. Please speak one at a
8 time. If you're speaking over each other, the court
9 reporter will not be able to get your questions on
10 the record.

11 Please note that any questions asked by a
12 Board member or staff are intended to help build a
13 complete record for the Board's decision and not to
14 express any preconceived notion or bias.

15 Are there any questions about our
16 procedures today?

17 Seeing none, would you -- do you have an
18 opening statement?

19 MR. GRADELESS: We do not.

20 HEARING OFFICER TIPSORD: Okay. In that
21 case, can we have the witness sworn in?

22 (Witness sworn.)

23 WHEREUPON:

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W. DAVID MCMILLAN

was duly sworn and called as a witness on behalf of the Illinois Environmental Protection Agency.

HEARING OFFICER TIPSORD: And do you have a clean copy of his testimony?

If there's no objection, we will enter the Prefiled Testimony of David McMillan as Exhibit Number 1. Seeing no objection, it's Exhibit Number 1.

(Exhibit Number 1 was marked for identification and admitted into evidence.)

With that, we will proceed to the prefiled questions which the Board filed.

MS. LIU: I think it would make a better dialogue if you were to read it and they were to answer it.

HEARING OFFICER TIPSORD: Okay. Cool.

The Board prefiled its questions, and the first question is: The IEPA proposes to add 611.858, consisting of a secondary standard for fluoride. IEPA notes that 611.858 was repealed in a prior rulemaking. IEPA further notes that Sections 611.901, 611.904, and 611.908 include references to

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1 the repealed Section 611.858.

2 Secondary standards relate to aesthetic
3 qualities of water and are not federally enforceable
4 standards. The Board regulations do not include
5 these secondary standards. However, enforceable
6 primary standards require public notice when there is
7 an exceedance of the secondary standard for fluoride.
8 Rather than adding Section 611.858, as proposed by
9 IEPA, comment, instead, on removing the references to
10 611.858 in the public notice provisions found in
11 611.901, 611.904, and 611.908, and then we provided
12 some examples of language.

13 MR. MCMILLAN: The Illinois EPA considers
14 the removal of references in Section 611.858 and
15 Sections 611.901, 611.904, and 611.908 as a solution
16 as equally viable as re-addition of the previously
17 repealed Section 611.858.

18 HEARING OFFICER TIPSORD: Thank you.
19 Okay. Comment on -- question number 2.

20 Comment on making the above revisions
21 through a future rulemaking under the Board's
22 identical in substance rulemaking authority as set
23 forth in Section 17.5 of the Environmental Protection
24 Act.

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1 MR. MCMILLAN: The Agency believes that
2 because the revision is a correction of a previous
3 error, and because the first notice of the proposed
4 amendments has been published in the Illinois
5 Register, it is prudent to complete the change now,
6 rather than through a future rulemaking.

7 HEARING OFFICER TIPSORD: And the third
8 question: In IEPA's response to Board Questions (e)
9 in the June 4, 2015, Opinion and Order, IEPA stated:
10 Given that the fluoride requirement itself is not a
11 health-based standard, no impacts as described would
12 result, and that's a closed quote.

13 In the Statement of Reasons, IEPA
14 explained that the proposed revision to the Board's
15 fluoride standard is based on the statutory
16 requirement at 415 ILCS 40 for the Illinois
17 Department of Public Health to promulgate rules
18 requiring the addition of fluoride, based on
19 recommendations of the U. S. Department of Human
20 Health and Services.

21 Would you please clarify why the fluoride
22 requirement in the Board's rules is not health-based
23 standard and if it is solely a requirement based on
24 the statutory requirement for the Illinois Department

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1 of Public Health.

2 MR. MCMILLAN: The Illinois EPA states
3 that because it must permit the installation and
4 operation of community water supplies, which include
5 plants adding fluoride, the Board should have a
6 standard in its regulation. The standard is not
7 health-based but, rather, is -- its basis is in the
8 interest of safety of chemical addition, as
9 consideration of health was already made by the
10 legislation when the statute was created, 415 ILCS
11 40/7a.

12 The Agency also asserts that the standard
13 in the Board's regulation is not based solely on the
14 statutory requirement for the Illinois Department of
15 Public Health. This rule reinforces the existing law
16 requiring fluoridation of public water supplies. The
17 Environmental Protection Agency will, by this rule,
18 cooperate with the Public Health Department, and by
19 its field personnel, ensure proper operation of
20 equipment and enforcement of the rule.

21 And I have a citation R1973 -- pardon me.
22 Let me start over. R1973-13 Opinion of the Board at
23 38 on January 3rd, 1975.

24 HEARING OFFICER TIPSORD: Alisa, do you

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1 have some follow-up?

2 MS. LIU: First of all, thank you very
3 much, Mr. McMillan, for providing the responses
4 before hearing so we had a chance to take a look at
5 them.

6 In response to this question, you have
7 said that the standard is not health-based but rather
8 in the interest of safety of chemical addition.

9 MR. MCMILLAN: Correct.

10 MS. LIU: And I was hoping that maybe you
11 could help me follow the logic a little bit more
12 clearly.

13 MR. MCMILLAN: Okay.

14 MS. LIU: So it says the health issues of
15 adding fluoride were something that the legislature
16 considered when it made the requirement for the
17 Department of Public Health.

18 MR. MCMILLAN: Correct.

19 MS. LIU: And so is it through the
20 Board's rules at Section 611.125 that the role of the
21 IEPA is to cooperate with the Department of Public
22 Health to simply ensure that the fluoride is added
23 safely.

24 MR. MCMILLAN: That's correct. The

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1 Illinois EPA issues permits for chemical addition to
2 community water supplies. Hence, we have a
3 responsibility to ensure that the chemical is added
4 in a safe, consistent manner.

5 MS. LIU: And so is it the rule of the
6 Board then to promulgate regulations for the Illinois
7 EPA to permit these facilities and then to ensure
8 that they're operating properly?

9 MR. MCMILLAN: Correct.

10 DR. GLOSSER: One follow-up question.
11 How is this standard different, then, than other
12 water quality standards that EPA would say is a
13 health standard? In other entities -- I've looked at
14 several reports from counties that have a column that
15 say what they're doing, and it says they're adding
16 fluoride as a public health benefit, so it's
17 perceived as being a public health benefit, and so
18 I'm not really quite sure why EPA would say it's a
19 safety issue for EPA and not a health benefit.

20 MR. MCMILLAN: We have, under Section
21 611, a maximum contaminant level established for
22 fluoride. Fluoride is naturally occurring in
23 groundwater in Illinois. So we have some facilities
24 that have -- would not have to add fluoride.

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1 DR. GLOSSER: Right.

2 MR. MCMILLAN: However, for systems that
3 do add fluoride, this is an oral health standard as
4 opposed to a maximum contaminant level. So we
5 already have a secondary standard of two milligrams
6 per liter that has a public notice requirement
7 associated with it, as well as a maximum contaminant
8 level of four milligrams per liter, and this is
9 another oral health-based standard.

10 MS. GLOSSER: So oral health is not under
11 the purview of IEPA. It's a Department of Public
12 Health issue only?

13 MR. MCMILLAN: Correct, as reflected in
14 the statute, I believe.

15 MS. GLOSSER: Okay. It just makes me
16 nervous when I see things said that it's not a public
17 health issue because of some of the criticisms about
18 fluoride and whether or not that gives them, you
19 know, support for their argument that we shouldn't be
20 using fluoride.

21 MR. MCMILLAN: Okay.

22 HEARING OFFICER TIPSORD: All right.
23 Let's go off the record.

24 (A ten-minute recess was taken.)

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1 Let's go back on the record.

2 All right. I have checked again that no
3 one has signed up to offer any comment or further
4 testimony. I just want to ask one more time, does
5 anyone else want to offer comment or testimony? And
6 seeing no one, I want to thank everyone. Thank you,
7 Mr. McMillan, for your testimony.

8 Our next hearing is August 19th at 1:00
9 p.m. in Room 2-025 in the Thompson Center in Chicago.

10 Prefiled testimony must be submitted by
11 August 12, 2015, and I would just like to say now on
12 the record that I would anticipate that we would
13 close the record very quickly after that hearing. I
14 know the Agency has asked for expedited
15 consideration, and we will close the record very
16 shortly after that, just to give you a heads-up.

17 If there's nothing else, thank you all
18 for coming today and we'll see you in August.

19 (Whereupon the hearing was concluded at
20 1:25 p.m. and the above-entitled
21 proceedings were continued to August 19,
22 2015, at 1:00 p.m.)

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1 STATE OF ILLINOIS)
2 COUNTY OF MACON) SS

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5 I, LISA K. HAHN, CSR, RMR, do hereby state
6 that I am a court reporter doing business in the city of
7 Decatur, State of Illinois; that I reported by means of
8 machine shorthand the proceedings held in the foregoing
9 cause, and that the foregoing is a true and correct
10 transcript of my shorthand notes so taken as aforesaid.

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Lisa K. Hahn, CSR, RMR
Notary Public, Macon County, Illinois
CSR #084.2149

<p>A</p> <p>A.D 1:16</p> <p>able 5:9</p> <p>above-entitled 13:20</p> <p>acknowledge 5:5</p> <p>acknowledged 5:5</p> <p>Act 7:24</p> <p>add 6:20 11:24 12:3</p> <p>added 10:22 11:3</p> <p>adding 7:8 9:5 10:15 11:15</p> <p>addition 8:18 9:8 10:8 11:1</p> <p>Adm 1:5 4:8</p> <p>admitted 3:13 6:11</p> <p>aesthetic 7:2</p> <p>aforsaid 14:10</p> <p>afternoon 4:4</p> <p>Agency 2:10 3:14 6:3 8:1 9:12,17 13:14</p> <p>Agency's 5:1</p> <p>Alisa 2:8 4:12 9:24</p> <p>allow 4:15</p> <p>allows 4:15</p> <p>amendments 1:4 4:7 8:4</p> <p>answer 6:17</p> <p>answers 3:4 5:2</p> <p>anticipate 13:12</p> <p>Appeared 2:13</p> <p>appointed 4:5</p> <p>argument 12:19</p> <p>asked 5:11 13:14</p> <p>asserts 9:12</p> <p>associated 12:7</p> <p>August 13:8,11</p>	<p>13:18,21</p> <p>authority 7:22</p> <p>Avenue 1:14 2:2 2:10</p> <hr/> <p>B</p> <p>B 3:12</p> <p>back 13:1</p> <p>based 8:15,18,23 9:13</p> <p>basis 9:7</p> <p>behalf 2:13 6:2</p> <p>believe 12:14</p> <p>believes 8:1</p> <p>benefit 11:16,17 11:19</p> <p>better 6:15</p> <p>bias 5:14</p> <p>bit 10:11</p> <p>Board 1:1,14 2:2 2:7,8 4:5,10,22 5:12 6:14,19 7:4 8:8 9:5,22 11:6</p> <p>Board's 5:13 7:21 8:14,22 9:13 10:20</p> <p>Box 2:11</p> <p>break 4:18</p> <p>build 5:12</p> <p>business 14:6</p> <hr/> <p>C</p> <p>C 2:1</p> <p>called 6:2</p> <p>case 5:2,21</p> <p>cause 14:9</p> <p>Center 13:9</p> <p>Chairman 4:10</p> <p>chance 10:4</p> <p>change 8:5</p> <p>checked 13:2</p> <p>chemical 9:8 10:8 11:1,3</p> <p>Chicago 13:9</p>	<p>citation 9:21</p> <p>city 14:6</p> <p>clarify 8:21</p> <p>clean 6:5</p> <p>clearly 10:12</p> <p>close 13:13,15</p> <p>closed 8:12</p> <p>Code 1:5 4:8</p> <p>column 11:14</p> <p>coming 13:18</p> <p>comment 4:18 4:24 7:9,19,20 13:3,5</p> <p>comments 3:3 4:16</p> <p>community 9:4 11:2</p> <p>complete 5:13 8:5</p> <p>concluded 13:19</p> <p>consideration 9:9 13:15</p> <p>considered 10:16</p> <p>considers 7:13</p> <p>consistent 11:4</p> <p>consisting 6:21</p> <p>contaminant 11:21 12:4,7</p> <p>continued 13:21</p> <p>Control 1:1,14 2:2,7</p> <p>Cool 6:18</p> <p>cooperate 9:18 10:21</p> <p>copy 6:5</p> <p>correct 10:9,18 10:24 11:9 12:13 14:9</p> <p>correction 8:2</p> <p>counties 11:14</p> <p>County 1:12 14:2,15</p> <p>court 5:8 14:6</p> <p>created 9:10</p>	<p>criticisms 12:17</p> <p>CSR 1:11 14:5 14:14,15</p> <hr/> <p>D</p> <p>D 3:1</p> <p>David 3:4 6:1,7</p> <p>day 1:16</p> <p>Deanna 2:8 4:10</p> <p>Decatur 14:7</p> <p>decision 5:13</p> <p>Department 8:17,19,24 9:14,18 10:17 10:21 12:11</p> <p>described 8:11</p> <p>dialogue 6:16</p> <p>different 11:11</p> <p>discuss 4:19</p> <p>docket 4:8</p> <p>doing 11:15 14:6</p> <p>Dr 2:8 4:10 11:10 12:1</p> <p>Drinking 1:4 4:7</p> <p>duly 6:2</p> <hr/> <p>E</p> <p>e 2:1,1 3:1,12 8:8</p> <p>East 1:14 2:2,10</p> <p>enforceable 7:3 7:5</p> <p>enforcement 9:20</p> <p>ensure 9:19 10:22 11:3,7</p> <p>enter 6:6</p> <p>entities 11:13</p> <p>entitled 4:6</p> <p>Entrance 1:15 2:3</p> <p>Environmental 2:10 6:3 7:23 9:17</p> <p>EPA 7:13 9:2</p>	<p>11:1,7,12,18 11:19</p> <p>equally 7:16</p> <p>equipment 9:20</p> <p>error 8:3</p> <p>established 11:21</p> <p>evidence 6:12</p> <p>examples 7:12</p> <p>exceedance 7:7</p> <p>exhibit 3:14 4:21 6:7,8,10</p> <p>existing 9:15</p> <p>expedited 13:14</p> <p>explained 8:14</p> <p>express 5:14</p> <hr/> <p>F</p> <p>facilities 11:7,23</p> <p>federally 7:3</p> <p>field 9:19</p> <p>file 4:23</p> <p>filed 6:14</p> <p>first 6:20 8:3 10:2</p> <p>fluoridation 9:16</p> <p>fluoride 6:21 7:7 8:10,15,18,21 9:5 10:15,22 11:16,22,22,24 12:3,18,20</p> <p>follow 10:11</p> <p>follow-up 10:1 11:10</p> <p>follow-ups 5:2</p> <p>foregoing 14:8,9</p> <p>forth 7:23</p> <p>found 7:10</p> <p>four 12:8</p> <p>further 6:23 13:3</p> <p>future 7:21 8:6</p> <hr/> <p>G</p>
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