

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM.) R03-21
CODE 602.105, 602.106, 602.108) Rulemaking - Public
and 602.115) Water Supply

Proceedings held on May 8, 2003, at 1:30 p.m., at the
Illinois Pollution Control Board, 600 South Second
Street, Suite 402, Springfield, Illinois, before Richard
R. McGill, Jr., Hearing Officer.

Reported By: Karen Bristow, CSR, RPR
CSR License No.: 084-003688

KEEFE REPORTING COMPANY
11 North 44th Street
Belleville, IL 62226
(618) 277-0190

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

APPEARANCES

Board Members Present:

Board Member Lynne P. Padovan

Board Staff Members Present:

Erin Conley
Alisa Liu, P.E.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
BY: Joey Logan-Wilkey
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
On behalf of the Illinois EPA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

INDEX

WITNESS	PAGE NUMBER
MICHAEL B. CRUMLY	7
JERRY H. KUHN	10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

EXHIBITS

NUMBER	MARKED FOR I.D.	ENTERED
Hearing Exhibit 1	37	37

1 PROCEEDINGS

2 (May 8, 2003; 1:30 p.m.)

3 HEARING OFFICER MCGILL: Good afternoon. I'd like
4 to welcome you to the Illinois Pollution Control Board.
5 My name's Richard McGill, and I'm the hearing officer
6 for this board rulemaking.

7 In this proceeding, the board is considering an
8 Illinois Environmental Protection Agency proposal filed
9 April 7, 2003. The agency is seeking to amend the
10 board's permitting rules for public water supplies at 35
11 Illinois Administrative Code 602. The board has
12 captioned the rulemaking "In the Matter of Amendments to
13 35 Illinois Administrative Code 602.105, 602.106,
14 602.108 and 602.115." The board assigned docket number
15 R03-21 to this proceeding, and on April 17, 2003, the
16 board accepted the agency's proposal for hearing.

17 Today is the first hearing. We have another
18 hearing scheduled for May 15 starting at 1:30 in the
19 board's Chicago office at the James R. Thompson Center.

20 Also present today on behalf of the board is Board
21 Member Lynne Padovan. She is the lead board member for
22 this rulemaking. Alisa Liu, to my left, is the
23 scientist with our technical unit, and I'll note that
24 Erin Conley, our rulemaking coordinator, is also in

1 attendance.

2 Today's proceeding is governed by the board's
3 procedural rules. All information that is relevant and
4 not repetitious or privileged will be entered into the
5 record. We'll start off with the agency's testimony,
6 followed by questions. If any member of the public
7 shows up and is interested in testifying or asking
8 questions, they'll have that opportunity. For the court
9 reporter, if you could speak up, please, and try not
10 to-- we'll try not to talk over each other so her
11 transcript will be clear.

12 Any questions about how we'll proceed today?
13 Seeing none, I'll ask the court reporter to go ahead and
14 swear in the agency's witnesses, and then I'll turn it
15 over to Agency Counsel Joey Logan-Wilkey to start off
16 the agency's presentation.

17 (Witnesses sworn.)

18 HEARING OFFICER MCGILL: If you'd just go ahead and
19 introduce the witnesses and let us know their position,
20 their title within the agency, and then they can just go
21 ahead and-- as I understand it, they have prepared
22 written testimony that they'll read into the record?

23 MS. LOGAN-WILKEY: Yes. Okay. My name is Joey
24 Logan-Wilkey, and I'm an assistant counsel with Illinois

1 Environmental Protection Agency, and with me today is
2 Mike Crumly, and he's the manager of the drinking water
3 unit with the compliance assurance section of the
4 Illinois EPA, and also is Jerry Kuhn. He is the permit
5 manager for the division of public water supplies at the
6 Illinois EPA. And if we could have Mike-- I think he's
7 going to start out explaining to the board the status
8 for our radionuclide enforcement program, and then Jerry
9 will address the changes to the permit regulations.

10 MR. CRUMLY: My name is Michael Crumly. I manage
11 the drinking water compliance unit, compliance assurance
12 section at the Illinois Environmental Protection
13 Agency. The drinking water compliance unit is
14 responsible for ensuring that community water supplies
15 comply with the federal Safe Drinking Water Act, the
16 Illinois Environmental Protection Act and the Illinois
17 Pollution Control Board regulations. I've worked for
18 the Illinois EPA compliance assurance section for
19 approximately 15 years. Prior to my work at the
20 Illinois EPA, I attended Southern Illinois University at
21 Carbondale and graduated with a bachelor of science
22 degree. Today I will testify about the status of
23 Illinois EPA's enforcement program for radionuclides in
24 drinking water.

1 In 1976, USEPA published the first radionuclide
2 rule, setting a standard of 5 pico curies per liter for
3 combined radium, 15 pico curies per liter for-- and 15
4 pico curies per liter for gross alpha. In 1991, USEPA
5 proposed a controversial update to the radionuclide
6 rule, which would have set a new standard of 20 pico
7 curies per liter. It wasn't until December 2000 USEPA
8 finally finalized an updated radionuclide rule. During
9 the delay in finalizing the rule, USEPA did not require
10 primacy agencies to pursue formal enforcement against
11 water systems not meeting the 1976 regulatory limits.
12 Ultimately, the 2000 radionuclide rule retained the 1976
13 maximum contaminant levels for combined radium, which is
14 5 pico curies per liter, and gross alpha, which is 15
15 pico curies per liter, and also added an MCL for total
16 uranium, 30 micrograms per liter, and changed the point
17 of sample collection.

18 As a result of the December 7, 2000, rule, the
19 Illinois EPA started requesting that all supplies in
20 noncompliance with the radionuclide MCL submit a signed
21 commitment that compliance would be achieved by December
22 8, 2003, which is the effective date of the new rule.
23 Water systems were advised that the relative risk of
24 incurring sanctions would tend to increase

1 proportionately with the length of delayed compliance
2 after December 8, 2003. Water systems that failed to
3 submit an acceptable compliance commitment schedule
4 during this initial outreach would be sent a violation
5 notice with the intent to consider the acceptance of an
6 enforceable schedule under a Section 31(a) compliance
7 commitment agreement if compliance is proposed by
8 December 8, 2003, or under a consent order with the
9 Attorney General's Office if compliance is proposed
10 after December 8, 2003.

11 To date, there have been a total of 221 community
12 water systems in Illinois that have experienced a
13 radionuclide MCL violation. Of the 221 systems, all but
14 102 water systems have returned to compliance.
15 Compliance for the other 119 water systems was achieved
16 by installation of water treatment, blending high-level
17 radium deep well water with low-level radium shallow
18 well water, water system inactivation, purchasing water,
19 abandoning the contaminated deep wells and drilling new
20 wells and/or any combination of the above. The Illinois
21 EPA anticipates that approximately 50 public water
22 supplies will fail to meet the December 8, 2003,
23 deadline and will be referred to the Attorney General's
24 Office, where they will be offered an opportunity to

1 enter into a consent order that will include a date
2 certain compliance schedule.

3 HEARING OFFICER MCGILL: Thank you. Mr. Kuhn?

4 MR. KUHN: My name is Jerry Kuhn. I am the manager
5 of the permit section for the division of public water
6 supplies of the Illinois Environmental Protection Agency
7 and have held that position since October of 2000. I
8 have worked for the Illinois EPA for approximately 21
9 years, including 11 years in the division of water
10 pollution control permit section and 8 years in the
11 Bureau of Land as the RCRA unit manager in the permit
12 section. Prior to my time in the Illinois EPA, I worked
13 for a consulting engineering firm. I received a
14 bachelor of science in civil engineering degree from
15 Bradley University in 1975 and a master of science in
16 thermal and environmental engineering degree from
17 Southern Illinois University at Carbondale in 1985. I
18 have been an Illinois licensed professional engineer
19 since 1980.

20 In my current position at the Illinois EPA, I
21 oversee the review of construction permit applications
22 submitted by community water supplies. A construction
23 permit is required by the Illinois EPA for construction
24 of any new community water supply and for changes or

1 modifications to an existing community water supply,
2 including water main extensions and water treatment
3 plant modifications.

4 Today I will testify in support of the proposed
5 amendments to 35 Illinois Administrative Code 602, the
6 permit regulations of Subtitle F, specifically in
7 regards to restricted status and the radionuclide
8 regulations as covered in Section 602.106 and the
9 certification statement required in construction permit
10 applications as covered in Section 602.108.

11 In regards to restricted status, Section 602.105
12 and 602.106 of the board rules currently provide
13 exemptions from restricted status and standards of
14 issuance to public water supplies that are not in
15 compliance the radionuclide rule. These exemptions will
16 expire on December 8, 2003. If the board allows the
17 exemptions to expire, the Illinois EPA will be
18 prohibited from issuing construction permits to as many
19 as 50 public water supplies who will not be in
20 compliance with the radionuclide rule on that date,
21 unless those facilities seek and are granted board
22 variances. Illinois EPA anticipates that it would
23 support such variance requests for public water supplies
24 that have an approved engineering plan and have

1 committed to a date for achieving compliance with the
2 radionuclide rule.

3 To avoid the need for 50 variance proceedings,
4 which would require the board, Illinois EPA and the
5 public water supplies to expend substantial resources,
6 the Illinois EPA is requesting that the board amend its
7 rules to allow the exemption to continue for all
8 facilities that have entered into consent orders. The
9 Illinois EPA through the Office of the Attorney General
10 is currently negotiating consent orders for radionuclide
11 compliance with the following public water supplies that
12 will not meet the December 8, 2003, deadline: The City
13 of Joliet, the City of West Chicago, the Village of
14 Elburn and the City of Yorkville. The Illinois EPA
15 anticipates the negotiation of up to 50 additional
16 consent orders within the next 12 months.

17 In calendar year 2002, the permit section issued
18 over 2500 construction permits. Each of these required
19 the applicant to complete application forms that contain
20 information important to the Illinois EPA permit
21 reviewer in making a determination as to whether to
22 issue a permit, deny the application or send a review
23 letter. Currently, the permit application forms are
24 available either by requesting copies from the Illinois

1 EPA or by printing off the forms available on the
2 Illinois EPA's Web site on the Internet. The forms must
3 then be completed either in writing or by typing using a
4 typewriter, as the forms are not allowed to be altered
5 in any way. The permit section has had many requests
6 from applicants to be allowed to electronically
7 transcribe the permit applications into the database of
8 their computer systems. Requiring applicants to certify
9 that construction permit applications are complete will
10 allow the Illinois EPA to give applicants permission to
11 submit computer-generated construction permit
12 applications. Thank you.

13 HEARING OFFICER MCGILL: Thank you. Well, we
14 appreciate your being here today and the testimony
15 you've provided. We have some questions that we wanted
16 to pose. I'll note for the record that no members of
17 the public are present, but we have put together some
18 questions that we wanted to get on the record, and if
19 you're prepared to answer them today, that's fine. If
20 not, we've got our hearing next week and you can
21 certainly follow up at that point.

22 Again, to my left is Alisa Liu. She's a scientist
23 with our technical unit, and I think she has some
24 questions to start us off. Alisa? Thanks.

1 MS. LIU: Good afternoon, Mr. Crumly and Mr. Kuhn.
2 Thank you for being here. Is it accurate to say that
3 the proposed rule does not provide relief from the
4 maximum contaminant levels and the other requirements
5 under Part 611, the primary drinking water standards,
6 and only provides relief from the restricted status
7 provisions of 602?

8 MR. KUHN: That's accurate. You're right. Just
9 provides relief from the restricted status to allow
10 water supplies to submit permit applications for water
11 main extensions after the December 8, 2003, date.

12 MS. LIU: Does Part 611 allow a public water supply
13 to come into compliance with the radionuclide standards
14 after December 8 without seeking some sort of a variance
15 or adjusted standard?

16 MR. KUHN: I don't think so. Come into
17 compliance? Not without a consent order or some other
18 legal mechanism.

19 MR. CRUMLY: All the water systems would still be
20 required to issue public notification and do that type
21 of-- you know, what's required by the rule, so this
22 doesn't affect that whatsoever.

23 MS. LIU: Okay.

24 HEARING OFFICER MCGILL: So if there were-- I think

1 35 Illinois Administrative Code 611.130(g) has a
2 process. I don't know if you have that handy. I've got
3 a copy here if you wanted to look at it. I believe it's
4 a process for relief from the actual MCL in the form of
5 a variance and--

6 MS. LIU: Adjusted standard.

7 HEARING OFFICER MCGILL: -- or an adjusted
8 standard. I think we were just trying to get a sense of
9 is there any other provision in 611 besides that--
10 besides 611.130(g) under which a water supply could get
11 relief from the December 8 deadline and be able to come
12 into compliance with the radionuclide standard after
13 December 8?

14 MR. KUHN: Not that I'm aware of.

15 MR. CRUMLY: I don't think so.

16 HEARING OFFICER MCGILL: Okay. Thank you. I know
17 Member Padovan had some questions. Did you want to go
18 ahead with those now?

19 BOARD MEMBER PADOVAN: Sure.

20 HEARING OFFICER MCGILL: Thanks.

21 BOARD MEMBER PADOVAN: Good afternoon. For a
22 public water supply to satisfy the proposed exemption,
23 does the CCA or court order have to impose a date
24 certain deadline for demonstrating that the public water

1 supply has come into compliance with the standards?

2 MR. CRUMLY: Sure.

3 BOARD MEMBER PADOVAN: Should the rule language be
4 specific in requiring that?

5 MR. CRUMLY: I would say yes. I mean, that's-- I
6 think the whole purpose is that the interim consumer
7 would establish deadlines. Time frames that the system
8 must meet won't be open-ended. There will be milestones
9 that the system will have to hit. Failure to hit that--
10 you know, like, for instance, you know, award contracts
11 or submit permits, you know, by such-and-such date, and
12 failure to do that would result in penalties or what
13 have you.

14 BOARD MEMBER PADOVAN: Okay. As a follow-up to my
15 first question, can you give us some idea or some range
16 of how much time noncompliant public water supplies
17 would be given to meet the standards?

18 MR. CRUMLY: It's really hard to say because each
19 system's so specific. Like, Joliet is going to have to
20 have major modifications, from what I understand, versus
21 a small mobile home park who might just be purchasing
22 water and they just have to lay a transmission main.
23 Jerry, could you--

24 MR. KUHN: And right now water supplies are in

1 various-- going to be in various stages too. Some are
2 in planning; some will be-- and we're talking after
3 December 8 of 2003, but some will-- might still be in
4 planning of some sort. Some will be in construction,
5 and depending on the size of the supply, it can take
6 various lengths of time. Joliet has indicated that it's
7 going to take substantial time; it's going to take years
8 for them to come to compliance. Some of the other
9 supplies should be coming in compliance in 2004.

10 BOARD MEMBER PADOVAN: I understand that each
11 circumstance might be unique, but too much
12 open-endedness I don't think is good for anybody.

13 MR. KUHN: Right. Well, the intent and the reason
14 we worded the proposed rule to being in compliance with
15 are intended to have-- give-- like Mike said, give them
16 milestones-- not just the final milestone, but interim
17 milestones that they'll have to meet-- and if they fall
18 out from those, then they could fall back into-- we
19 could put them on restricted status if they're not in
20 compliance with their consent order.

21 HEARING OFFICER MCGILL: I was wondering, the
22 current exemption in the rules that 602.105(d) and
23 602.106(d) had a-- really a built-in sunset provision,
24 that this is a regulatory exemption which they could

1 pursue instead of having to go through an individual
2 variance process, would only survive as long as-- or
3 until the federal-- until the USEPA adopted the final
4 radionuclide standards and those became effective.
5 The-- I'm just wondering, following up on Member
6 Padovan's concern about the open-ended nature of some of
7 these-- the open-ended nature of how much time these
8 facilities are going to have to eventually meet the
9 standards, would it make sense to have a sunset
10 provision on these proposed exemptions that would put
11 some end point to this?

12 MR. KUHN: I'm not sure I would see a point in
13 doing that. I mean, our intent with consent orders is--
14 are to get date certain that they'll have construction
15 completed, and everybody that's out of compliance by--
16 on December 8 of 2003, it would be our intent that
17 they'd have to enter into a consent order with
18 milestones that they're going to complete, so this
19 hopefully will go away-- all of this will go away after
20 the last facility has completed its upgrade to meet the
21 radionuclide standard, but--

22 MR. CRUMLY: They will have to demonstrate that the
23 time lines they propose-- that they'll have to
24 demonstrate to our satisfaction that they are, you know,

1 legitimate; you know, it takes this much time to get a
2 permit, takes this much time to acquire land, what have
3 you.

4 HEARING OFFICER MCGILL: I guess I'm looking at it
5 more from the perspective of the rule itself. I
6 understand that you've indicated today that the consent
7 orders or the compliance commitment agreements will have
8 date certain deadlines, interim milestones and a final
9 deadline to meet the standard. The rule itself, though,
10 is creating an exemption from the variance process that
11 the board has-- and that the General Assembly's
12 created. There's no end point for this regulatory
13 exemption that the agency's proposing, whereas the
14 existing regulatory exemption had a-- had an end point,
15 the effective date of the standards, and certainly if
16 there were a sunset provision in there, that would not
17 preclude the agency at some-- you know, if need be
18 proposing an amendment later on that that sunset needs
19 to be extended, but as written right now, it's just an
20 open-ended-- I mean, conceivably, 30 years from now, you
21 know, a water supply could still be using this process
22 and not being subject to-- or not having to go through
23 the variance demonstration.

24 So I guess what I was wondering is whether the

1 agency-- you certainly can give this some thought as to
2 whether it would make sense to put some outside date in
3 here that would I guess effectively repeal this
4 exemption from the board variance process.

5 MR. KUHN: I suppose we could, but our handle is
6 the consent order. I mean, the language is set up such
7 that they have to be in a consent order to get the
8 exemption, and--

9 HEARING OFFICER MCGILL: Right.

10 MR. KUHN: I mean, and it's really set up for
11 existing supplies at this time, the 50 approximately
12 more or less that we anticipate that are going to be in
13 noncompliance in December.

14 HEARING OFFICER MCGILL: Well, I guess that's
15 part-- this is a related question, but if you had a new
16 water supply that popped up in 2010 and doesn't meet the
17 radionuclide standard, I suppose it could avail itself
18 of this provision, and that just-- it seems like you're
19 crafting this for this set of 50, which is a finite
20 universe and-- but as written, you could have an
21 existing facility that falls out of compliance in 2007,
22 for example, or just have a new water supply that is
23 created in 2030 that could use this. It seems-- It
24 just-- Again, this is just my personal view. I'm not

1 expressing the position of the board, but it seems much
2 more broad and open-ended if really you're saying you
3 want to give these 50 water supplies a break from having
4 to do individual variance demonstrations.

5 MR. KUHN: But again, if that supply went out--
6 just the supply went out in 2005 or 2006, the way the
7 language is set up, they'd still have to enter into a
8 consent order with the Attorney General's Office or the
9 State of Illinois, you know, to come into compliance,
10 and so there would be the appropriate penalties or
11 restrictions applied through the consent order. So, I
12 mean, in theory, yeah, maybe it could be in the future
13 there's an existing supply that maybe was in compliance
14 and then went out and they had to come back in.

15 HEARING OFFICER MCGILL: So you-- what you're
16 suggesting, though, is a permanent form of relief in
17 lieu of a board variance. It would be a mechanism that
18 they could always look to. I was under the impression
19 that because there are so many who are not going to be
20 able to meet this December 8 deadline that it wouldn't
21 make sense to have a slug of 50 individual variance
22 petitions come through the board. I didn't think that
23 the agency's intent was to always be able to use some
24 alternative process in the board variance.

1 MR. KUHN: It's not. It's not, really. That's why
2 we set it up for the 50. And if, you know, a sunset
3 provision of some sort is more appropriate, we can take
4 a look at that and see if it's reasonable.

5 HEARING OFFICER MCGILL: I-- Yeah. I just wanted
6 to throw it out so you guys could be thinking about it,
7 and we'll think about it, and we can certainly talk
8 about it more.

9 MR. CRUMLY: And I think most systems of any size
10 have already been identified. There's not going to be
11 down the road here's a community of 50,000 that's been
12 over. We know where it's at; we know the system's been
13 tested. Any new water system that would want to open
14 up, you know, they would be putting a well in an area we
15 know where radium exists, we would, you know, have them
16 identify that and maybe not even allow a permit to do
17 that type of well if it's going to-- you know, if
18 they're not going to install the treatment when they're
19 designing the new water system.

20 So nowadays, when a new one pops up, a new one is
21 one of those that may have gone under, then over, then
22 under, but there's always been a history of-- you know,
23 because you're measuring pico curies per liter and
24 you're only at 5.5, you know, next year when you get an

1 annual average, it could be 5.4, you know, and it could
2 bring you into compliance. So most systems that pop up
3 new, they've always had kind of a history of it being
4 there, but just, you know, being pico curies per liter,
5 little bit takes you over, and so I wouldn't see some
6 big-- you know, three years from now a whole bunch of
7 new systems going over the standard. I wouldn't--
8 definitely wouldn't see any large systems. You might
9 see a mobile home park pop up here and there, but
10 nothing of any significant size like we have now.

11 Most of the systems that are over, like Joliet, the
12 big ones, have been out of compliance for 20 years, so
13 they were identified pretty early on. Since then,
14 we've-- the ones that do pop up serve 1,000 people, less
15 than 1,000 people, so I wouldn't see in the future any
16 systems of significant size where they really depend on
17 the status anyway. You know, they'd be small-- you
18 know, small mobile home parks or water associations
19 where they couldn't-- probably most likely wouldn't be
20 applying for permits in the first place because they're
21 done, they're there, you know, they're not extended,
22 so--

23 HEARING OFFICER MCGILL: Thank you.

24 MS. LIU: It seems like a lot of details that go

1 into the plan to come into compliance are contained in
2 the compliance commitment agreement?

3 MR. CRUMLY: Uh-huh.

4 MS. LIU: And I was wondering if you could describe
5 what all goes into a CCA and if you might happen to have
6 an example of one that you've used in the past that you
7 could share with us.

8 MR. CRUMLY: Well, what we ask a water system to do
9 is we ask them to hire a registered engineer, okay,
10 like, early on, within so many days-- 30 days is what we
11 give them now-- and most systems already pass this, but
12 initially, if I was a new water system and I went over
13 today, we would ask them to enter a commitment that
14 would require them to retain a registered engineer
15 within 30 days to start evaluating the system.

16 Then within six months, that engineer is required
17 to evaluate different treatment options to find the
18 most, you know, cost effective. For that situation, you
19 know, it might be drilling new wells, connecting onto a
20 new water system, you know, an actual treatment
21 installation, so we ask them to evaluate different
22 treatments, not just pick one and go with it; you know,
23 evaluate different ones.

24 Then after six months we ask them to submit a

1 compliance report. Basically, that compliance report
2 summarizes what they've done. We ask them to provide,
3 you know, what they-- you know, what option they pick
4 and why. We ask them-- They're supposed to, you know,
5 by then know how they are going to finance this
6 project. We ask them to provide an estimated cost and
7 then last but not least give us a schedule, okay? We
8 get that in, compliance section reviews it, and then we
9 turn it over to our permit section for a technical
10 review, you know, as far as the treatment that they're
11 requesting, and then at that point, depending on what
12 their solution is, the water system size, then we would
13 say yes or no.

14 And then from there, once we do accept it, we send
15 them a letter saying, okay, you've-- you know, you've
16 met, you know, passed our-- here's your time schedule
17 you already identified from us; failure to meet this
18 will, you know, possibly resort in further enforcement.
19 So I don't know. Does that answer your question?

20 MS. LIU: Do you require progress reports along the
21 way?

22 MR. CRUMLY: That's the whole part of the interim
23 milestones, so we don't make them, you know, every three
24 months send us a big, detailed report. We identify some

1 key items like award bids, start construction, apply for
2 permits, some of the-- that way we can kind of track the
3 progress. Once they miss a milestone, we call them on
4 the phone, say, what's up, you know, what's going on, or
5 else we have no contact and then we'll start, you know,
6 the letter process, and we'll reach a point usually, you
7 know, within 30 or 60 days of a passed milestone, say,
8 okay, we're done, you know, it's time to, you know,
9 escalate to the next level.

10 HEARING OFFICER MCGILL: I had a question along
11 those lines. The language for the proposed exemption
12 says that they must have entered into a compliance
13 commitment agreement or enforceable court order, and it
14 sounds like from what you've said so far that-- and I'm
15 just wondering if the rule language needs to be tweaked
16 at all-- you're really-- I mean, they don't just have to
17 have entered into the CCA or the court order, but do
18 they also have to be in compliance with it; I mean,
19 subject to the agreement or order and complying with its
20 interim milestones and--

21 MR. CRUMLY: Yeah, failure to meet one of those
22 milestones as specified in a CCA would-- you know, if
23 they don't quickly resolve it, you know, whatever
24 they're supposed to do, would immediately go to our

1 enforcement decision group for a referral, decide to--
2 oh, this is after the referral process?

3 HEARING OFFICER MCGILL: Well, at what point-- I
4 guess there-- this is a related question I had. There
5 are the compliance commitment agreements and then
6 there's enforceable court orders. Now, earlier I
7 thought I heard some testimony suggesting that after
8 December 8 of this year, any public water supply that
9 has-- that is noncompliant and is not under a compliance
10 commitment agreement would be referred to the Attorney--
11 the agency would refer that to the Attorney General's
12 Office to work on a consent order or court order.

13 MR. CRUMLY: The way-- Any proposal now that
14 projects compliance beyond December 8 would go to the
15 consent order, anyone that proposes compliance beyond
16 December, so we would not accept a CCA-- as it stands
17 today, we would not accept a proposal that compliance is
18 beyond December 8. We wouldn't accept one.

19 HEARING OFFICER MCGILL: Are there any CCAs, then,
20 among any of the water supplies that would have a
21 compliance date beyond December 8 of 2003?

22 MR. CRUMLY: Not through a-- We do not have any
23 CCAs that have a compliance end date that we will
24 approve beyond December 8 of 2003.

1 HEARING OFFICER MCGILL: Do you anticipate-- I
2 think you just said you didn't anticipate having any.

3 MR. CRUMLY: Not any-- If it's a new water system,
4 you know, if I just next month, you know, went over, of
5 course it's going to take more than five months to come
6 into compliance, so then we might have a CCA approved,
7 but as it stands today with all these existing systems,
8 December 8 comes, you're on restricted status and--

9 HEARING OFFICER MCGILL: Okay. I was just
10 wondering why-- I guess you just answered the question
11 of why the rule language has either a CCA or an
12 enforceable court order. So would a public water supply
13 have to have entered into a CCA with the agency by
14 December 8, 2003?

15 MR. CRUMLY: For this provision?

16 HEARING OFFICER MCGILL: For either of these
17 provisions. Or might they enter into--

18 MR. CRUMLY: I would say a consent order, right.

19 HEARING OFFICER MCGILL: After December 8, there's
20 not going to be any CCAs--

21 MR. CRUMLY: Not for these existing systems.

22 HEARING OFFICER MCGILL: Not for the existing
23 systems, but there could be a new system--

24 MR. CRUMLY: Possibly a new one might have a CCA.

1 HEARING OFFICER MCGILL: -- that starts next year
2 and has a problem and--
3 MR. CRUMLY: Right.
4 HEARING OFFICER MCGILL: Okay.
5 MR. CRUMLY: We want to give them a fair chance to
6 resolve without imposing a penalty or whatever.
7 HEARING OFFICER MCGILL: So in terms of the
8 sequence of events here, a CCA-- under Section 31 of the
9 act, if the CCA process-- reenforcement process doesn't
10 work, then it's referred to the Attorney General's
11 Office for a court order.
12 MR. CRUMLY: Uh-huh.
13 HEARING OFFICER MCGILL: Oh, wait. The rule
14 language is enforceable court order. I take it that
15 would be-- Who are the-- Would the Attorney General have
16 to be a party to that order?
17 MR. CRUMLY: Yeah.
18 MR. KUHN: Yes.
19 HEARING OFFICER MCGILL: Or a State's Attorney?
20 MR. CRUMLY: (Nods head up and down.)
21 HEARING OFFICER MCGILL: Or would these all be
22 through the Attorney General's Office?
23 MR. CRUMLY: There might be a small handful of them
24 that--

1 MS. LOGAN-WILKEY: It could be through either one,
2 but generally we refer them to the Attorney General's
3 Office. We may refer some of the smaller systems to the
4 USEPA.

5 HEARING OFFICER MCGILL: I'm going to have to
6 interrupt you. Would you mind if we swear you in?

7 MS. LOGAN-WILKEY: That's fine.

8 HEARING OFFICER MCGILL: The court reporter will go
9 ahead and swear you in.

10 (Witness sworn.)

11 HEARING OFFICER MCGILL: Thank you.

12 MS. LOGAN-WILKEY: Would you like for me to go back
13 over that?

14 HEARING OFFICER MCGILL: If you could repeat that,
15 please.

16 MS. LOGAN-WILKEY: Sure. Typically we refer most
17 of our cases-- the majority of our cases to the Attorney
18 General's Office. There's a possibility that we could
19 refer cases to the State's Attorney's Office, but I
20 don't foresee that happening in this situation.
21 However, we do anticipate possibly some of our smallest
22 water systems, say, serving 50 to 300 people, possibly
23 referring those to the United States Environmental
24 Protection Agency. We haven't come to any decision on

1 any of those at this point, but that's a possibility.
2 In that event, I would-- the enforceable court order
3 would be with USEPA and the U.S. Attorney's Office, I
4 would assume, so we're-- I guess we're anticipating that
5 that would cover that as well.

6 HEARING OFFICER MCGILL: So the court order would
7 be enforceable by either state or federal--

8 MS. LOGAN-WILKEY: Courts, correct.

9 HEARING OFFICER MCGILL: Okay. I just-- I don't
10 have any particular scenario in mind. I just didn't
11 know if, you know, conceivably, you know, there could be
12 some court order that a water supply and somebody else
13 could be a party to, but here you're really talking
14 about State's Attorney--

15 MS. LOGAN-WILKEY: That's our intent, yes.

16 HEARING OFFICER MCGILL: -- the Illinois Attorney
17 General or USEPA. That would be-- Would that be
18 Department of Justice or--

19 MS. LOGAN-WILKEY: Yes.

20 HEARING OFFICER MCGILL: Okay. Thank you. Just
21 one follow-up on that. If somebody's not meeting a
22 milestone, they wouldn't automatically fall out of this
23 exemption, I take it.

24 MR. CRUMLY: Correct.

1 MS. LOGAN-WILKEY: That's correct. That's our
2 intent. Our intent was-- and I think, Jerry, you may
3 want to speak to this also, but our intent was to set
4 this up in a way that if there was a reason that we felt
5 was acceptable that caused them to fall out of
6 compliance with their schedule, we did not want to be
7 required to place them on restricted status.

8 For example, we have-- I'm not sure of the number,
9 but several water systems who are currently applying for
10 loans through the Illinois EPA, and we certainly can't
11 base their compliance on funding, but if they have
12 complied substantially with their consent order or their
13 CCA and, for example, if the State finds that we don't
14 have funds to fund all of these loans that we've
15 committed to make, we don't want to then have to place
16 someone like Joliet-- and they aren't a good example
17 because they aren't seeking loan money, but West
18 Chicago, I believe, is seeking loan money. If next fall
19 we find that we have no money for budget reasons or
20 whatever reason and we have to tell them they're going
21 to have to wait for their funds, then that's going to
22 push their schedule back, and so we don't want to have
23 to place someone like West Chicago-- who is doing
24 everything they can to comply yet is halfway through

1 this process and waiting, say, 60 days for loan money--
2 we don't want to have to place them on restricted status
3 and then cause them to not be able to extend a water
4 main or replace a water main or whatever they may need
5 to do to seek a construction permit.

6 HEARING OFFICER MCGILL: But if you were to have a
7 water supply that's not doing everything it can do, the
8 agency then could terminate a compliance commitment
9 agreement; is that correct?

10 MS. LOGAN-WILKEY: Yes, yes. Under Section 31(a)
11 of the act, if they fall out of compliance with the
12 schedule and their compliance commitment agreement, then
13 the compliance commitment agreement becomes null and
14 void and we can forward the case on to the Attorney
15 General's Office for enforcement, and also then, if we
16 felt that it was appropriate, we could place them on
17 restricted status. That would be another tool that we
18 would have to encourage them to come back into
19 compliance with their schedule.

20 HEARING OFFICER MCGILL: Thank you. Oh, this is
21 just clarifying, but if a public water supply is under
22 one of these radionuclide CCAs or court order, it could
23 still be placed on a restricted status if they were out
24 of compliance with another drinking water standard; is

1 that correct?

2 MR. CRUMLY: Yes.

3 MS. LOGAN-WILKEY: Yes.

4 HEARING OFFICER MCGILL: Okay. Thank you.

5 MS. LIU: Mr. Crumly, you mentioned in your
6 testimony that the agency anticipates about 50 public
7 water supplies will not be able to meet the December 8
8 deadline. Would you be able to provide a list of those
9 facilities by name and location just for the record so
10 we have an idea of--

11 MR. CRUMLY: Sure.

12 MS. LIU: -- who they are? Thank you.

13 BOARD MEMBER PADOVAN: Have you received the
14 regulated communities' information on the cost of the
15 variance process?

16 MS. LOGAN-WILKEY: Not at this time. I believe we
17 are still trying to put something together on that, and
18 we'll get that to you as soon as we have it. The City
19 of Joliet plans to I believe participate in next week's
20 hearing, and so we are hopeful that they will be able to
21 provide us with some of that information hopefully prior
22 to the hearing on Thursday.

23 HEARING OFFICER MCGILL: Thank you.

24 MS. LIU: Mr. Crumly, you also mentioned something

1 about public notification requirements if a public water
2 supply is out of compliance. When will those public
3 water supplies be required to notify their customers if
4 they are--

5 MR. CRUMLY: It's every 90 days.

6 MS. LIU: Okay.

7 MR. CRUMLY: It's ongoing. Every 90 days they have
8 to come out with a new notification saying-- basically
9 giving the health effects and giving their level, their
10 concentrations in the water, and also gives them--
11 they're supposed to also include something-- what
12 they're doing to achieve compliance, so those are the
13 major requirements that are needed in each public
14 notice. And also once a year the system is-- every
15 water system has to produce a consumer confidence
16 report, and of course those systems with radium, you
17 have to in that report say something about that
18 violation. So other than the every-- quarterly
19 every-three-month public notice, they also do an annual
20 notification that kind of reinforces what they've been
21 sending out each quarter.

22 BOARD MEMBER PADOVAN: As a follow-up to that, when
23 you say public notice, do you mean it's published in a
24 newspaper of record or they have to tell their specific

1 customers personally?

2 MR. CRUMLY: It's a direct mail.

3 BOARD MEMBER PADOVAN: Direct mail?

4 MR. CRUMLY: Direct mail notification. In some
5 cases the consumer confidence report can be published in
6 a paper, but as far as the individual notice they send
7 out every quarter, it's direct mail. They're attached
8 to the utility bill or separately mailed.

9 MS. LIU: In your statement of reasons, there was a
10 mention of copies of permit applications that would be
11 provided for the board to refer to to get an idea of
12 what they might look like.

13 MS. LOGAN-WILKEY: We do not have that prepared as
14 of yet, but we will bring that for the next hearing.

15 MS. LIU: All right. Thank you.

16 MS. LOGAN-WILKEY: I'm sorry.

17 HEARING OFFICER MCGILL: Well, thank you very much.

18 MS. LOGAN-WILKEY: I'm sorry. Jerry did bring
19 one. I didn't think that we had that prepared, but
20 Jerry does have one. Do we need to admit that as an
21 exhibit or--

22 HEARING OFFICER MCGILL: That would be fine.

23 MS. LOGAN-WILKEY: Okay. Move to-- What is it,
24 Jerry?

1 MR. KUHN: It's the application for construction
2 permit and schedules that we do and the instructions.

3 MS. LOGAN-WILKEY: Okay. I would move to admit the
4 application for construction permit as Exhibit 1.

5 HEARING OFFICER MCGILL: There's been a motion to
6 enter into evidence a construction application, permit
7 application. Could you describe that for me again? Or
8 if you just-- Counsel could hand it to me, then I could
9 describe it for the record. Thank you. Thank you.
10 I've been handed an IEPA division of public water supply
11 permit section application for construction permit with
12 several schedules attached to it, along with a copy of
13 instructions for completing the application,
14 construction permit application. I'll-- If there's no
15 objection to entering this into the record as a hearing
16 exhibit, I'll mark it as Hearing Exhibit 1 and enter it
17 into the record.

18 Are there any other questions for the agency's
19 witnesses? I don't believe the board has any more at
20 this time, and there are still no members of the public
21 present. I'll just talk about a few procedural issues
22 before we adjourn.

23 We expect to have the transcript of today's hearing
24 in our Chicago office by the end of next week, so by May

1 16, maybe a little sooner than that. Shortly after we
2 receive it, the board will post the transcript on our
3 Web site, which is www.ipcb.state.il.us. You will find
4 the agency's proposal on our Web site along with all
5 board orders throughout this proceeding.

6 I'll mention a few items. As this transcript will
7 be on our Web site, I'll just note that anyone may file
8 written public comments with the clerk of the board.
9 Our current notice and service lists for this rulemaking
10 are located here at the side of the room. Persons on
11 the notice list receive copies of board orders and
12 hearing officer orders only. Persons on the service
13 list receive those orders along with documents that
14 participants in this rulemaking file with the clerk,
15 such as a public comment, so if a member of the public
16 for example files a public comment with the clerk of the
17 board, he or she would have to serve those persons on
18 the service list with a copy of the public comment.

19 As I mentioned, we have a hearing-- our next
20 hearing in this rulemaking is scheduled for May 15, next
21 week, starting at 1:30 in the board's Chicago office at
22 the James R. Thompson Center. If anyone has any
23 questions about the procedural aspects of this
24 rulemaking, I can be reached by telephone at

1 312-814-6983 or by e-mail at mcgillr@ipcb.state.il.us.

2 Are there any other matters anyone would like to
3 raise at this point?

4 MS. LOGAN-WILKEY: No. Thank you.

5 HEARING OFFICER MCGILL: Seeing none, I'd like to
6 thank everyone very much for their participation today.
7 The testimony was very helpful and illuminating. This
8 hearing's adjourned.

9 (Hearing adjourned.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1 STATE OF ILLINOIS)
) SS
2 COUNTY OF ST. CLAIR)

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I, KAREN BRISTOW, a Notary Public and Certified Shorthand Reporter in and for the County of St. Clair, State of Illinois, DO HEREBY CERTIFY that I was present at 600 South Second Street, Suite 402, Springfield, Illinois, on May 8, 2003, and did record the aforesaid Hearing; that same was taken down in shorthand by me and afterwards transcribed upon the typewriter, and that the above and foregoing is a true and correct transcript of said Hearing.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Notarial Seal this 11th day of May, 2003.

Notary Public--CSR
#084-003688

