

ILLINOIS POLLUTION CONTROL BOARD
June 25, 1987

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R85-14
PUBLIC WATER SUPPLY)
REGULATIONS, 35 ILL. ADM.)
CODE 602.105 AND 602.106)

PROPOSED RULE. REQUEST FOR ADDITIONAL COMMENTS.

ORDER OF THE BOARD (by J. Anderson):

This proceeding was initiated by the regulatory proposal filed by the Agency on June 13, 1985. On the same day, the Board ordered first notice publication in the Illinois Register, which notice appeared at 9 Ill. Reg. 10594. On August 15, 1985, after two public hearings, the Board adopted the proposal as emergency rules which expired January 11, 1986.

By Order of April 16, 1987, the Board again directed first notice publication of this proposal, as required by the Administrative Procedures Act when a rule has not been adopted within one year of first notice publication. This notice appeared at 11 Ill. Reg. 7873 on May 1, 1987. Economic hearings were held on May 5 and May 12. The public comment period closed on June 12, 1987.

The Board places a high priority on completion of this rulemaking, as it is aware that adoption of the proposal would allow economic development to proceed in several communities. The Board is accordingly in the process of reviewing the most recent additions to the lengthy record previously developed in this proceeding.

While the Board has not as yet determined that the record supports adoption of this proposal, it would appear that the proposal as originally submitted in 1985 needs revision in light of events discussed in 1987.

At the last hearing in this matter, the Agency discussed its intention to commence, in cooperation with USEPA, an "enhanced enforcement program". This program would have a special emphasis on public water supplies which are in violation of the radiological quality standards and which have not made an enforceable written commitment to achieve compliance by a certain date.

If the Agency's proposed rule change were not adopted, any public water supply which had not been granted a variance and

which was found to be in violation of the radiological quality standards would continue to remain on restricted status until compliance was actually achieved. Continuation of restricted status would essentially be an additional "penalty" to aid in enforcement of the Act and encourage achievement of compliance more quickly.

On the other hand, if this proposal is adopted, restricted status would be lifted for all public water supplies, regardless of any finding by the Board in an enforcement action, for instance, that the supply had acted in bad faith and had ignored compliance requirements over several years. The Board would question its ability to put a recalcitrant community back on restricted status if a blanket rule existed removing all such communities from restricted status.

The Board accordingly believes that in order to avoid unintended results, the Agency proposal would need modification as outlined below.

Under the Illinois Administrative Procedure Act, if the Board should choose to adopt this proposal, the Board would enter an Order directing that second notice of this proposal be submitted to the Joint [Legislative] Committee on Administrative Rules (JCAR). JCAR has 45 days in which to review the proposed rules, to suggest changes, and/or to make objections to adoption and filing of the rules. Once a proposal is in JCAR's hands, no further changes can be made in the proposal unless they are suggested by JCAR.

Given these circumstances, the Board would be hesitant to adopt an amendment to the Agency proposal without giving an opportunity for comment on the wording of the amendment. While the Board could adopt a second notice Order and delay submittal to JCAR until comments had been received, given the great public interest in expedited decision in this matter, the Board believes that it is preferable to solicit comments while it continues its review and deliberation of this record. The Board accordingly requests that any comments on the language below be filed on or before July 10, 1987. Adherence to this schedule will allow the Board to consider this proceeding at its July 16 meeting.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE F: PUBLIC WATER SUPPLIES
CHAPTER I: POLLUTION CONTROL BOARD

Section 602.105 Standards for Issuance

- a) Except as provided in Section 602.105(d), 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 (Ill. Rev. Stat. ~~1981~~ 1985, ch. 111 1/2, pars. 1001 et seq.) (Act), or of this Chapter.

- 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 Act (Ill. Rev. Stat. ~~1981~~ 1985, ch. 111, pars. 201 et seq.), the Illinois Professional Engineering Act (Ill. Rev. Stat. ~~1981~~ 1985, ch. 111, pars. 5101 et seq.), the Illinois Structural Engineering Act (Ill. Rev. Stat. ~~1981~~ 1985, ch. 111, pars. 6501 et seq.), or any required combination thereof.
- d) Until January 1, 1989, the Agency shall not deny to any applicant any construction or operating permit required by this Part provided that:
 - 1) the public water supply has not been placed on restricted status by Order of the Board entered pursuant to the criteria of Section 33 of the Act at the conclusion of an enforcement action brought against the public water supply pursuant to Title VIII of the Act; and
 - 2) the public water supply has a fluoride concentration less than or equal to 4 mg/l; or
 - 3) the public water supply has a combined radium 226 and radium 228 concentration less than or equal to 20 pCi/l; or
 - 4) the public water supply has gross alpha particle activity (including radium-226, but excluding radon and uranium) concentration less than or equal to 60 pCi/l.

(Source: Amended at 11 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 this Chapter.
- b) Except as provided in Section 602.106(d), 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 January 1, 1989, the Agency's published list of supplies subject to restricted status shall not include supplies which are eligible for issuance of permits pursuant to the criteria of Section 602.105(d).

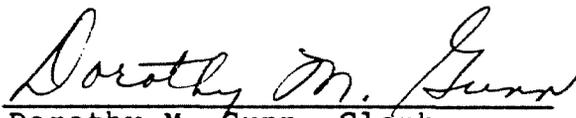
(Source: Amended at 11 Ill. Reg. _____, effective _____).

IT IS SO ORDERED.

B. Forcade concurred.

J. D. Dumelle dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 25th day of June, 1987 by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board