

ILLINOIS POLLUTION CONTROL BOARD

November 6, 2003

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

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by L.P. Padovan):

On April 7, 2003, the Board received a proposal from the Illinois Environmental Protection Agency (IEPA) to amend the Board's permitting rules for public water supplies (PWS) at 35 Ill. Adm. Code 602. The Board on June 19, 2003, adopted the proposal, with clarifying amendments, for publication of first notice in the *Illinois Register*. On September 4, 2003, the Board proposed the amendments for second notice review by the Joint Committee on Administrative Rules (JCAR). JCAR considered the proposed rules at its October 14, 2003 meeting and issued a certificate of no objection. After making a few minor changes to the rules requested by JCAR, none of which merit discussion, the Board today adopts the proposed amendments as final rules.

The rules extend the duration of a current exemption, allowing IEPA to continue issuing construction and operating permits to qualifying PWS, though the water supplies do not meet the radionuclide standards for drinking water. The rules are available to a PWS not meeting the drinking water standards *only if* there is a court order or Compliance Commitment Agreement (CCA) binding the PWS to a specific schedule for complying with the drinking water standards. The exemption does *not* exempt any PWS from meeting the radionuclide drinking water standards. The main change the Board made to IEPA's original proposal is to add a "sunset" provision under which the exemption expires on December 8, 2009. The current exemption ends by its own terms on December 8, 2003.

In this opinion, the Board gives an overview of the final rules, describes this rulemaking's proceedings, provides background on the radionuclide standards and "restricted status," and summarizes the main issues that have arisen during this rulemaking. The final rules appear in the order following this opinion.

## **OVERVIEW OF THE FINAL RULES**

Under amended Sections 602.105 and 602.106, IEPA could continue issuing permits to PWS that do not meet the final drinking water standards, called Maximum Contaminant Levels (MCLs), for radionuclides (radium-226, radium-228, uranium, and gross alpha particle activity). This is allowed, however, only if the PWS is obligated by enforceable court order or CCA to meet the MCLs pursuant to a specific schedule. For example, IEPA could grant a construction permit to a qualifying PWS to build a water main extension or modify its treatment plant, though the PWS does not meet a radionuclide MCL.<sup>1</sup> Tr.1 at 10-11.

The exemption is from the ban on issuing permits to non-compliant PWS, not from the drinking water standards. At the Board's request, IEPA offered additional language to its original proposal so that the exemption would have a "sunset" date, which in the final rule, as at first and second notice, is December 8, 2009. Continuing the exemption from the permit ban should have little or no effect on drinking water safety.<sup>2</sup> Statement at 8-9; Tr.2 at 29-30. After two public hearings and a public comment period, no opposition has been expressed to continuing the exemption.

Without these amendments, approximately 50 PWS would have to individually petition the Board for variance relief this year, at considerable cost to the water supplies and the State. Tr.1 at 11. The amendments also include new certification requirements for construction permit applications (Section 602.108) and new references to IEPA rules on design criteria for PWS (Section 602.115).

## **PROCEDURAL HISTORY**

The Board received IEPA's rulemaking proposal, including IEPA's statement of reasons, on April 7, 2003, and accepted the proposal for hearing on April 17, 2003. The Board held two public hearings on the proposal, one in Springfield on May 8, 2003, and the other in Chicago on May 15, 2003.

The following persons participated at hearing: Jerry Kuhn, Manager of the Permit Section, Division of Public Water Supplies of IEPA; Michael Crumly, Manager of the Drinking Water Compliance Unit, Compliance Assurance Section of IEPA; Joey Logan-Wilkey, Assistant Counsel, Division of Legal Counsel of IEPA; Allen Persons, Director of Public Works for the Village of Plainfield; David English, Water Utility Superintendent for the City of West Chicago; Dennis Duffield, Director of Public Works and Utilities for the City of Joliet; and Roy Harsch, principal in the law firm of Gardner, Carton, and Douglas on behalf of the City of Yorkville.

As required by Section 27(b) of the Environmental Protection Act (Act) (415 ILCS 5/27(b) (2002)), the Board made the Department of Commerce and Community Affairs'

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<sup>1</sup> Hearing exhibits are cited as "Exh. at \_." The Springfield hearing transcript is cited as "Tr.1 at \_." The Chicago hearing transcript is cited as "Tr.2 at \_."

<sup>2</sup> IEPA's statement of reasons within its proposal is cited as "Statement at \_."

(DCCA) decision not to conduct an economic impact study (EcIS) available to the public at least 20 days before hearing. In its April 17, 2003 letter, DCCA explained that it lacks the staff and financial resources to perform an EcIS. No one testified about DCCA's letter.

The Board hearing officer entered three exhibits into the record at hearing, all offered by IEPA. The transcripts of the Springfield and Chicago hearings were received by the Board on May 15 and 19, 2003, respectively, and promptly placed on the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). The hearing officer set a deadline of June 6, 2003, for filing public comments to ensure the Board would have time to consider the comments before proceeding to first notice. The Board received one public comment, which IEPA filed.<sup>3</sup>

On June 19, 2003, the Board adopted first-notice amendments, which appeared in the *Illinois Register* on July 7, 2003 (27 Ill. Reg. 9895-9902 (July 7, 2003)), starting a 45-day public comment period. The Board received no public comments on the amendments proposed for first notice. The Board adopted its second-notice opinion and order on September 4, 2003. JCAR considered the proposed amendments on October 14, 2003, and issued a certificate of no objection.

### **BACKGROUND ON MCLs & "RESTRICTED STATUS"**

Generally, radionuclides occur naturally in some deep bedrock aquifers and have presented problems for many drinking water systems in Illinois, primarily in the northern one-third of the State. Tr.2 at 22-23; Exh. 3. Under Section 17.6 of the Act (415 ILCS 5/17.6 (2002)), Illinois drinking water standards for radionuclides must be the same as the federal standards known as MCLs. MCLs are adopted by the United States Environmental Protection Agency (USEPA) to implement the federal Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*). Those standards, as codified in Board rules, are 5 pico curies per liter (pCi/L) for combined radium (radium-226 and radium-228), 15 pCi/L for gross alpha particle activity, and 30 micrograms per liter (µg/L) for uranium. *See* 35 Ill. Adm. Code 611.330. Compliance with these standards is required effective December 8, 2003. *Id.*

Under Board rules, IEPA generally cannot issue a construction or operating permit to a PWS that is out of compliance with an MCL. *See* 35 Ill. Adm. Code 602.105(a), 602.106(a). Board rules require that the non-compliant PWS be placed on a "restricted status" list by IEPA. "Restricted status" is an Illinois-only list of PWS banned from receiving construction permits. *See* 35 Ill. Adm. Code 602.106(a), (b). Once on restricted status, the non-compliant PWS is subject to the permit ban and accordingly cannot receive a permit to, for example, add service connections, until the PWS complies with the MCL.

A PWS not meeting an MCL therefore could receive a permit only if it first demonstrated to the Board that it was entitled to a variance (415 ILCS 5/35-38 (2002)) from the permit ban. To receive the variance, a PWS would first have to prove, in an adjudicatory proceeding, that the permit ban would impose an "arbitrary or unreasonable hardship" on the PWS. *See* 415 ILCS 5/35(a) (2002)). From 1977 to 1997, the Board issued 134 such variances for 83 PWS exceeding

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<sup>3</sup> IEPA's public comment is cited as "PC 1 at \_."

the existing radionuclide MCLs, which USEPA established in 1976. Tr.1 at 8; Statement at 3, 8. The relief provided by variance was from the permit ban, not from the drinking water standards.

The Board in 1997 adopted a limited *regulatory* exemption that provided the same relief without requiring a case-by-case variance demonstration and determination. *See Amendments to 35 Ill. Adm. Code Subtitle F, R96-18* (May 1, 1997). The regulatory exemption (35 Ill. Adm. Code 602.105(d), 602.106(d)) has been available to those PWS that did not meet the 1976 MCLs but did meet USEPA's 1991 interim radionuclide standards. The Board was "prompted to provide such relief because of unusual delays in promulgating" the final federal radionuclide standards. Statement at 2.

As with variance relief, PWS availing themselves of the regulatory exemption were not exempt from the 1976 drinking water MCLs, but rather from restricted status. The Board noted at the time it adopted the exemption that almost no PWS in Illinois exceeded the 1991 radionuclide standards proposed by USEPA. *See R96-18, slip op. at 6-7*. The regulatory exemption from restricted status was written to expire on the effective date of the final federal radionuclide standards.

It was not until December 7, 2000, that USEPA adopted the final radionuclide standards. USEPA retained the existing 1976 MCL of 5 pCi/L for combined radium (radium-226 and radium-228), rejecting its 1991 proposed standard of 20 pCi/L for each of the two radium isotopes. USEPA adopted final MCLs of 15pCi/L for gross alpha particle activity, and 30 µg/L for uranium. Tr.1 at 8; Statement at 2-4. The Board's 1997 regulatory exemption from the permit ban expires on the effective date of these final MCLs—December 8, 2003.

The Board adopted USEPA's final drinking water standards for radionuclides on October 4, 2001, bringing into Board rule the December 8, 2003 compliance date. *See SDWA Update: USEPA Amendments (July 1, 2000 through December 31, 2000), R01-20* (Oct. 4, 2001). The Board also adopted rules providing special requirements for any petition for variance or adjusted standard from the radionuclide MCLs. *See 35 Ill. Adm. Code 611.130*.

## **DISCUSSION**

The Board now summarizes the main issues that have arisen during this rulemaking, all of which the Board addressed at first notice.

### **No Relief from Obligation to Meet MCLs**

The amendments do *not* exempt any PWS from the requirement to meet the drinking water standards for radionuclides. Instead, the amendments exempt only qualifying PWS from the permit ban, allowing improvements and expansions to proceed while the water system installs treatment for radionuclides or otherwise achieves MCL compliance. To qualify for the exemption, the non-compliant PWS must be subject to an enforceable schedule for complying with the MCLs. Tr.1 at 14; Tr.2 at 18-19, 32; Statement at 1-2, 6; PC 1 at 2.

Because only those PWS that have entered into CCAs or consent orders requiring date-certain compliance with the radionuclide standards will qualify, and IEPA will continue to enforce the radionuclide standards, the State of Illinois is not expected to lose its primary enforcement responsibility under the federal Safe Drinking Water Act. Statement at 8-9.

### **Drinking Water Safety/Public Notification**

Continuing the exemption from restricted status should have little or no impact on the safety of the drinking water provided by qualifying PWS. Statement at 8-9; Tr.2 at 29-30. The exemption has no bearing on public notification requirements that apply to PWS. Each non-compliant PWS is still required to notify its customers, every 90 days by direct mail, of its failure to meet the MCL, the contaminant concentrations present in the water, health effects, and the compliance steps being taken. Additionally, water systems may still be placed on restricted status for noncompliance with any MCL for another contaminant. Tr.1 at 33-36; Tr.2 at 18-19.

### **Binding the PWS**

A PWS that does not meet a final radionuclide standard on December 8, 2003, may avoid restricted status *only if* the PWS is bound to comply with the final standard under either an enforceable court order or a CCA with IEPA. Statement at 5-6. Under Section 31 of the Act (415 ILCS 5/31 (2002), *amended by* P.A. 93-152, eff. July 10, 2003), a CCA is designed to bring an alleged violator into compliance without IEPA referring the matter to the Attorney General's Office (AGO) or a State's Attorney for enforcement.

IEPA makes clear in the record that the court order or CCA will provide a *date certain* for the PWS to comply with the MCLs, as well as *interim deadlines* for items such as evaluating treatment options, awarding contracts, submitting permit applications, and starting construction. Tr.1 at 16, 24-26; PC 1 at 2. At first notice, the Board modified IEPA's proposal by making a specific compliance schedule an *explicit* prerequisite. *See* Sections 602.105(e) and 602.106(e).

### **Affected PWS**

A total of 221 community water systems in Illinois have violated a radionuclide MCL. Of the 221 systems, 119 have come into compliance by installing water treatment, blending high-level radium water from deep wells with low-level radium water from shallow wells, inactivating the water system, purchasing water, connecting to a new water system, abandoning contaminated deep wells and drilling new wells, or any combination of these. Tr.1 at 9, 24.

In 2001, IEPA began contacting the PWS then exceeding the 5 pCi/L combined radium MCL and the 15 pCi/L gross alpha MCL. Tr.1 at 8; Tr.2 at 13-14; Statement at 4-5. IEPA is currently issuing a Violation Notice (VN) to each PWS that (1) is exceeding a radionuclide standard and (2) has not signed a "Radionuclide Compliance Commitment" stating that the PWS will comply by the December 8, 2003 deadline. After receiving the VN, the PWS has an opportunity to enter a CCA, promising to comply by the deadline. Tr.1 at 8-9; PC 1 at 1.

If there is no agreement with the PWS to comply by the December 8, 2003 deadline, IEPA states that it will refer the matter to the AGO for enforcement, though IEPA may refer some of the smallest water systems to USEPA instead for enforcement. At that point, the PWS would have an opportunity to enter into an enforceable court order, also known as a consent order, which “requires compliance with the radionuclide rule by a date certain.” PC 1 at 1; Tr.1 at 9-10, 27, 30-31.

IEPA anticipates that approximately 50 PWS will fail to meet the December 8, 2003 deadline and will, by the end of this year, have been referred for enforcement. These PWS serve populations ranging in size from 45 people (a subdivision) to over 106,000 people (City of Joliet). Tr.1 at 9, 12; Tr.2 at 10; Exh. 3 (IEPA list of potential candidates for restricted status); PC 1 at 1. As of May 2003, the AGO was negotiating consent orders with the City of Joliet, the City of West Chicago, the Village of Elburn, and the City of Yorkville. Tr.1 at 12; Tr.2 at 28. As of June 6, 2003, the State had entered into consent orders with two PWS. PC 1 at 1.

### **Economic Impact**

Unless the Board amends the current restricted status exemption to extend beyond the December 8, 2003 effective date of the final radionuclide standards, each non-compliant PWS, whether or not it is bound by a compliance schedule, would need to petition the Board for an individual variance to be able to receive IEPA permits. It is estimated that a single variance proceeding would cost a PWS no less than \$10,000 in legal fees alone, and that figure could go up dramatically if a hearing is required due to a citizen objection to the petition. Tr.2 at 24-25. Roy Harsch on behalf of the City of Yorkville testified that small water systems could not afford to seek a variance. Tr.2 at 33.

The variance process is costly not only for water systems. Handling over 50 variance petitions for relief from the permit ban would use up substantial Board and IEPA resources. Tr.1 at 12; Tr.2 at 30, 33; Statement at 5-7. Moreover, IEPA “anticipates that it would support such variance requests for [PWS] that have an approved engineering plan and have committed to a date for achieving compliance with the radionuclide rule.” Tr.1 at 11-12. Facing this year’s MCL deadline, it is unnecessary to initiate and process a large number of variance petitions for PWS that are or soon will be under a CCA or court-ordered compliance schedule. Tr.1 at 12; Tr.2 at 30, 33; Statement at 5-7.

### **Timing**

IEPA asks the Board to adopt the proposed amendments before the final MCLs become effective, *i.e.*, by December 8 of this year, when the existing regulatory exemption from restricted status expires. Statement at 1. The Board satisfies IEPA’s request by its actions today. Because the effective date of the MCLs is now known, the Board amended the current exemption so that it refers expressly to the date December 8, 2003. *See* Sections 602.105(d) and 602.106(d). Additionally, the exemption states that it applies as of December 8, 2003.

This amendment is not intended to *permanently* replace the variance process of the Act when a PWS needs relief from restricted status, but rather to address this large set of PWS unable

to meet the fast-approaching radionuclide deadline. Tr.1 at 21-22. As IEPA stated at hearing, the amendments are “set up for existing supplies at this time, the 50 approximately more or less that we anticipate are going to be in noncompliance in December.” Tr.1 at 20. Therefore, the regulatory exemption has a “sunset” date. Exh. 2.

It will take PWS varying lengths of time to come into compliance with the radionuclide MCLs. Some systems are expected to comply by next year, while others requiring major modifications will take longer. Treatment usually requires construction permits, which are unavailable to systems on restricted status. A sunset date of December 8, 2009, was chosen as the outside date for MCL compliance, designed to allow all currently non-compliant PWS enough time to come into compliance. The City of Joliet faces the longest compliance schedule. Tr.1 at 15-18; Tr.2 at 8, 10-12, 19-21, 32-33; Exh. 3. Joliet is spending over \$80 million to improve its 14-well system by the end of 2008. Tr.2 at 28. The end of 2009, however, was selected as the sunset to accommodate a year of quarterly sampling for Joliet’s compliance demonstration. Tr.2 at 14-17.

### **Certification**

IEPA also requests that the Board adopt amendments that would require each person signing a construction permit application for a PWS to certify that the information in the application is complete and accurate and that the text has not been altered from IEPA’s permit application form or template. Statement at 7-9.

In calendar year 2002, IEPA issued over 2,500 construction permits. Tr.1 at 12. IEPA has been asked many times if applicants may electronically transcribe the IEPA form so applicants could generate applications by computer. Tr.1 at 12-13; Exh. 1 (construction permit application form). IEPA wants to allow this convenience, but needs the certification to ensure that the applicant has not altered the IEPA form. Tr.1 at 13. These amendments are in the order below. *See* Section 602.108.

### **References to IEPA Rules**

Board rules authorize the Agency to adopt criteria for designing, operating, and maintaining PWS facilities as necessary to ensure safe, adequate, and clean water. The provision refers to these Agency criteria being in “published . . . Technical Policy Statements.” 35 Ill. Adm. Code 602.115. This language is replaced with a reference to IEPA “rules” because IEPA has promulgated rules setting forth the criteria (35 Ill. Adm. Code 651-654). *See* Section 602.115.

### **CONCLUSION**

Under these adopted amendments, PWS are *not* be relieved of their obligation to meet the radionuclide drinking water standards. Non-compliant PWS can get relief *only* from the permit ban and *only* if they are bound to a specific schedule by enforceable court order or CCA for meeting the drinking water standards. This will allow the many PWS not currently meeting the

MCLs for radionuclides to receive permits without each PWS having to individually petition the Board for a variance.

The exemption is tailored to the 50 or so PWS unable to meet this year's radionuclide compliance deadline. The exemption in no way *permanently* replaces the variance process under the Act for PWS needing relief from restricted status. The exemption therefore has an expiration date—December 8, 2009, *i.e.*, the estimated compliance date for the PWS with the longest schedule for coming into compliance with the drinking water standards.

Some PWS will require construction permits to make changes that will enable them to meet the drinking water standards. Many if not all non-compliant PWS will have the incentive to become bound to a court-ordered or CCA compliance schedule so they will be able to come within this exemption. Some PWS have already committed to schedules for meeting the radionuclide MCLs.

### **ORDER**

The Board adopts as final rules the following amendments to 35 Ill. Adm. Code 602 and directs the Clerk to file the rules with the Office of the Secretary of State. Deletions to the current rules are stricken, and additions to the current rules are underlined.

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

PART 602  
PERMITS

Section	
602.101	Construction Permit
602.102	Operating Permit
602.103	Algicide Permit
602.104	Emergency Permit
602.105	Standards for Issuance
602.106	Restricted Status
602.107	Signatory Requirement for Permit Applications
602.108	Construction Permit Applications
602.109	Operating Permit Applications
602.110	Algicide Permits Applications
602.111	Application Forms and Additional Information
602.112	Filing and Final Action by Agency on Permit <u>Applications</u> <del>Application</del>
602.113	Duration
602.114	Conditions
602.115	Design, Operation and Maintenance Criteria
602.116	Requirement for As-Built Plans
602.117	Existence of Permit No Defense



602.118	Appeals from Conditions
602.119	Revocations
602.120	Limitations

Appendix A: References to Former Rules

AUTHORITY: Implementing Section 17 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/17 and 27].

SOURCE: Filed with Secretary of State January 1, 1978; amended and codified at 6 Ill. Reg. 11497, effective September 14, 1982; amended at 8 Ill. Reg. 2157, effective February 7, 1984; emergency amendment at 9 Ill. Reg. 13371, effective August 16, 1985, for a maximum of 150 days; amended at 10 Ill. Reg. 7337, effective April 22, 1986; amended in R96-18 at 21 Ill. Reg. 6562, effective May 8, 1997; amended in R03-21 at 27 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

Section 602.105 Standards for Issuance

- a) The Agency shall not grant any construction or operating permit required by this Part ~~unless 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 December 8, 2003 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~~ pCi/L;

- 2) the radium-228 level is less than or equal to 20 ~~pCi/L~~ pCi/L; or
  - 3) the gross alpha particle activity level minus the radium-226 level is less than or equal to 15 ~~pCi/L~~ pCi/L.
- e) From December 8, 2003, until December 8, 2009, the Agency may issue a construction or operating permit to a public water supply that exceeds the maximum contaminant level (MCL) for combined radium (radium-226 and radium-228) of 5 pCi/L, the MCL for gross alpha particle activity of 15 pCi/L, or the MCL for uranium of 30 µg/L (35 Ill. Adm. Code 611.330) if the supply is bound to comply with the MCL pursuant to a specific schedule under:
- 1) A Compliance Commitment Agreement executed pursuant to Section 31 of the Act [415 ILCS 5/31]; or
  - 2) An enforceable court order after referral by the Agency.

(Source: Amended at 27 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) 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 December 8, 2003, 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~~ pCi/L;
  - 2) the radium-228 level is less than or equal to 20 ~~pCi/L~~ pCi/L; or

- 3) the gross alpha particle activity level minus the radium-226 level is less than or equal to 15 ~~pCi/L~~ pCi/L.
- e) From December 8, 2003, until December 8, 2009, the Agency shall not place a public water supply on restricted status for exceeding the maximum contaminant level (MCL) for combined radium (radium-226 and radium-228) of 5 pCi/L, the MCL for gross alpha particle activity of 15 pCi/L, or the MCL for uranium of 30 µg/L (35 Ill. Adm. Code 611.330) if the supply is bound to comply with the MCL pursuant to a specific schedule under:
- 1) A Compliance Commitment Agreement executed pursuant to Section 31 of the Act [415 ILCS 5/31]; or
  - 2) An enforceable court order after referral by the Agency.

(Source: Amended at 27 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;
- c) General ~~Layout~~ layout;
- d) Detailed ~~Plans~~ plans;
- e) Specifications;
- f) A professional seal to satisfy Section 602.105 (c) requirements; ~~and~~
- g) Certification by each person signing the application that the information in the application is complete and accurate, and that the text of the application has not been changed from the Agency's official construction permit application form; and
- hg) Any other information required by the Agency for proper consideration of the permit.

(Source: Amended at 27 Ill. Reg. \_\_\_\_, effective \_\_\_\_)

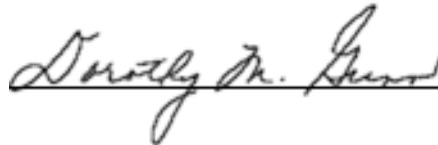
#### Section 602.115 Design, Operation, and Maintenance Criteria

- a) The Agency may adopt criteria, ~~in rules published in the 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 of its 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 27 Ill. Reg. \_\_\_\_, effective \_\_\_\_)

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 6, 2003, by a vote of 6-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board