

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:) R2015-22
) Rulemaking-Water
PUBLIC WATER SUPPLIES:)
PROPOSED AMENDMENTS TO 35)
ILL. ADM. CODE PARTS 601,)
602 and 603)

REPORT OF PROCEEDINGS taken before Hearing
Officer J. MARK POWELL, by Lisa K. Hahn, CSR, RMR, a
notary public within and for the County of Macon and
State of Illinois, at the Illinois Pollution Control
Board, 1021 North Grand Avenue East (Main Entrance)
Springfield, Illinois, on the 17th day of August,
2015, A.D., at 10:00 a.m.

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

2 ILLINOIS POLLUTION CONTROL BOARD
3 BY: J. MARK POWELL, ESQ.
4 Hearing Officer
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6 James R. Thompson Center, Suite 11-500
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10 BY: MS. STEPHANIE FLOWERS, ESQ.
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Appeared on behalf of the Illinois
Environmental Protection Agency;

ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

MS. DEANNA GLOSSER
MR. GERALD KEENAN
MR. JEROME O'LEARY
MR. ANAND RAO
MS. CARRIE ZALEWSKI

ALSO PRESENT: MR. RICHARD COBB
MR. STEPHEN JOHNSON
MR. DAVID COOK
MR. DAVID MCMILLAN

REPORTED BY:
Lisa K. Hahn, CSR, RMR
CSR License No. 084.002149

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MARKED ADMITTED

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1 HEARING OFFICER POWELL: Okay. Let's get
2 started. Good morning and welcome to this Illinois
3 Pollution Control Board Hearing.

4 My name is Mark Powell and I'm the
5 Hearing Officer for this rulemaking proceeding
6 entitled, Public Water Supplies: Proposed Amendments
7 to 35 Illinois Administrative Code, Parts 601, 602
8 and 603. The Board's docket for this rulemaking is
9 R-1522.

10 Also present today from the Board are, to
11 my right, Board Member Jerry Keenan, the lead Board
12 Member for this rulemaking; to my immediate left,
13 Chairman Dr. Deanna Glosser; next to her is Board
14 Member Jerry O'Leary; and next to Board Member Keenan
15 is Board Member Carrie Zalewski; and Anand Rao of the
16 Board's technical staff will be joining us in
17 progress as soon as he is able to get here.

18 As background, the Illinois Environmental
19 Protection Agency filed this rulemaking proposal with
20 the Board on May 8, 2015.

21 By order of May 21, 2015, the Board
22 accepted the proposal for hearing, and the first
23 hearing took place on July 2, 2015, in Chicago. This
24 is the second and final scheduled hearing in this

1 rulemaking.

2 The Hearing Officer Order dated May 26,
3 2015, set a deadline of July 27, 2015, to pre-file
4 testimony for this hearing. No participant has
5 pre-filed testimony for this hearing.

6 I entered another Hearing Officer Order
7 on August 10, 2015, posing questions by the Board and
8 Staff for IEPA's witnesses, which will also be taken
9 up today. No other participant has pre-filed any
10 questions for IEPA for this hearing.

11 On Thursday, last Thursday, the Agency
12 helpfully filed responses to the Board's pre-filed
13 questions. I anticipate that the Agency will move to
14 have the responses entered into the record today. We
15 will take that up when we turn to swearing in IEPA's
16 witnesses.

17 I also want to note a couple other
18 preliminary matters before we go to testimony. I
19 want to note for the record that there is a sheet
20 inside the door on which anyone who did not pre-file
21 testimony can indicate they would like to testify
22 today.

23 Also, there's another sheet next to that
24 one on which anyone can indicate that they would like

1 to offer a comment here today. Please note that it
2 is separate from the sheet for testimony.

3 Another preliminary matter, this
4 proceeding is governed by the Board's procedural
5 rules. All information that is relevant and that is
6 not repetitious or privileged will be admitted into
7 the record.

8 Please note that any questions posed
9 today by the Board Members or Staff are intended
10 solely to assist in developing a clear and complete
11 record for the Board's decision and do not reflect
12 any prejudgment of the proposal.

13 And with that, I think we should turn
14 to -- Ms. Flowers, if you would introduce yourself
15 and your witnesses, we can get them sworn in and turn
16 to any questions for them.

17 MS. FLOWERS: Okay. I'm Stephanie
18 Flowers with the Division of Legal Counsel at the
19 Illinois EPA, and I am second chairing for Joanne
20 Olson, who was at the first hearing but is now out on
21 maternity leave.

22 Between the first and second hearings,
23 the Illinois EPA filed several -- in response to
24 Board questions and public comments, we filed several

1 language proposals, so I have those here, and I would
2 like to enter them as exhibits. I also have some
3 back on the table back there in case anybody needs
4 them for reference material. So if I could enter
5 them now.

6 HEARING OFFICER POWELL: Sure. Could we
7 do those one at a time, please?

8 MS. FLOWERS: Okay. The first one I'll
9 do is what we submitted on August 6 of 2015, the
10 Illinois EPA's Post Hearing Comments.

11 HEARING OFFICER POWELL: Thank you. So
12 are you moving to have these entered into the record?

13 MS. FLOWERS: Yes.

14 HEARING OFFICER POWELL: For the record,
15 is there any objection to this motion?

16 Seeing none, I'm marking this document as
17 Hearing Exhibit 4. We had 3 at the first hearing,
18 and entering it into the record.

19 (Document marked as Hearing

20 Exhibit No. 4 for identification.)

21 MS. FLOWERS: And the second filing is
22 the Illinois EPA's Response to Comments of Board
23 Questions, which we filed with the Board on August
24 13th of 2015.

1 HEARING OFFICER POWELL: Thank you. This
2 will be marked as Exhibit 5.

3 (Document marked as Hearing
4 Exhibit No. 5 for identification.)

5 And for the record, is there any
6 objection to admitting this document into the record?
7 Seeing none, this will be entered into the record as
8 Exhibit 5.

9 MS. FLOWERS: In addition, we had some
10 comments on just typos, so I prepared an errata sheet
11 that corrects two of those that I would enter with
12 the Board today as an exhibit for this hearing.

13 HEARING OFFICER POWELL: Okay. For the
14 record, is there any objection to admitting this
15 document into the record?

16 Seeing none, I'm marking this document as
17 Hearing Exhibit 6 and entering it into the record.

18 (Document marked as Hearing
19 Exhibit No. 6 for identification.)

20 MS. FLOWERS: And, again, I will have
21 copies of that on the table back there.

22 HEARING OFFICER POWELL: Thank you.

23 MS. FLOWERS: We don't have any
24 testimony, but we do have a panel here to answer any

1 questions the Board has on any of these documents,
2 and I will introduce them.

3 The farthest from me is Rick Cobb. He's
4 the Deputy Manager, Division of Public Water
5 Supplies. Then we have Steve Johnson, the manager at
6 the Champaign fill operation section from Division of
7 Public Water Supplies. Next to him, David Cook,
8 Acting Permit Section Manager and Manager of the
9 Springfield Field Operation Section, Division of
10 Public Water Supplies. And closest to me, Dave
11 McMillan, who is the Manager, Division of Public
12 Water Supplies.

13 And with that, I'll turn it back to you
14 or open it up to comment.

15 HEARING OFFICER POWELL: Thank you.
16 Would the court reporter please swear the witnesses
17 in collectively now?

18 (Witnesses sworn.)

19 WHEREUPON:

20 RICHARD COBB, STEPHEN JOHNSON, DAVID COOK
21 and DAVID MCMILLAN, called as witnesses herein,
22 having been first duly sworn, deposeth and saith as
23 follows:

24 HEARING OFFICER POWELL: Okay. We can

1 now move on to questions -- any questions for IEPA's
2 witnesses.

3 If you are a participant here today and
4 you have a question for these witnesses, please give
5 me a signal, and before asking your first question,
6 please, for the record, state your name and any
7 organization you're representing today.

8 Does anybody have -- anybody in the
9 audience have any questions for these witnesses?

10 Seeing none, does and -- does any Board
11 member have questions for these witnesses today?

12 Seeing none, I believe Anand may have
13 some, but I just have a couple of quick follow-up
14 questions in response to the filing on Thursday of
15 these post responses to the comments.

16 You refer in several places to a
17 rulemaking, a follow-up rulemaking to this one to
18 develop a new Part 604. Could you describe a little
19 bit of sort of the purpose and scope of that
20 rulemaking and why it's separate from this one?

21 MR. MCMILLAN: Our current thinking is
22 that we will at sometime next year go to outreach on
23 a revision that will be Part 604, which will be
24 design, operation, and maintenance regulations.

1 The purpose of this regulation will be to
2 consolidate many of the current existing regulations
3 into a more concise, understandable design operation
4 and maintenance regulation.

5 HEARING OFFICER POWELL: Is there any
6 further questions on that subject from anyone?

7 MR. KEENAN: Just by way of -- can you
8 remind me about the timing of that follow-on as best
9 you know?

10 MR. MCMILLAN: Well, we're hopeful that
11 we will go to outreach spring, early summer, of next
12 year with that regulation and hopeful that, you know,
13 within nine months to a year from that time we'll go
14 to a Board proposal.

15 MR. KEENAN: Okay.

16 HEARING OFFICER POWELL: Any further
17 questions?

18 Seeing none, the only other question I
19 had is in regard to IPEA's Responses to -- oh, let's
20 see. It's the section on corporations by reference,
21 Section 601.115. On page 3 of this document
22 addressing subpart (b), you refer -- or the -- let's
23 see.

24 There's a reference to the Recommended

1 Standards for Water Works, published by the Great
2 Lakes Upper Mississippi River Board of State and
3 Provincial Public Health and Environmental Managers
4 that --

5 Well, the first question I have is, is
6 that -- do you intend to incorporate that by
7 reference or ask that the deputy incorporate that by
8 reference in this rulemaking under Section 601.115?

9 MR. MCMILLAN: Correct.

10 HEARING OFFICER POWELL: Okay. And then
11 later I believe there's a reference to doing the same
12 thing with that, or incorporating that section, I
13 believe, by referencing another rulemaking maybe in
14 the following rulemaking?

15 MR. MCMILLAN: Actually, the intent
16 when we -- this was in response to Captain Curry's
17 note that it's really not fair that we use the Ten
18 States Standards when there's no public comment
19 process.

20 Our thinking on that is that that Ten
21 States Standard will be incorporated into the 604
22 regulations and not be incorporated by reference. We
23 will take the relevant sections out of the Ten States
24 Standards and incorporate those into the design,

1 operation, and maintenance standards.

2 So that should address the fact that, you
3 know, the Board has not had an opportunity for the
4 public to comment on the use of those standards. But
5 at the current time, we rely on those standards and
6 need them in this regulation until that can be done.

7 HEARING OFFICER POWELL: Thank you. I
8 have nothing further for the witnesses. Does anybody
9 else?

10 CHAIRMAN GLOSSER: Do you want me to call
11 Anand and see where he's at?

12 HEARING OFFICER POWELL: Yeah. Maybe if
13 we could go off the record for a couple minutes and
14 try to --

15 MR. MCMILLAN: We do have somebody that
16 does want to offer testimony, too, I believe.

17 HEARING OFFICER POWELL: Oh, right.

18 Captain Curry, you wanted to offer
19 comments, right, is that correct, as opposed to
20 testimony?

21 CAPTAIN CURRY: Yes.

22 (A brief recess was taken.)

23 HEARING OFFICER POWELL: We'll go back on
24 the record, please.

1 We were in with questions for the Agency
2 witnesses and we went off the record, and Anand Rao
3 from our support technical staff is now here and I
4 believe he has some follow-up questions, so I'll turn
5 it over to him now.

6 MR. RAO: Yeah. Let me collect my
7 bearings.

8 HEARING OFFICER POWELL: Sure.

9 MR. RAO: Okay. I'll start with the
10 Agency's response to some of the comments.

11 In response to Mr. Groncki, is that how
12 you pronounce it? Yeah, Groncki's question (b)(2),
13 the Agency in its response states that it is amenable
14 to the change that has been -- regarding the
15 inclusion of professional geologists also signing off
16 on certain parts of the permit, I guess, regarding
17 groundwater conditions, specifically related to
18 groundwater conditions and nothing else; right?

19 MR. COBB: (Nods in the affirmative.)

20 MR. RAO: I had a question. In our
21 existing rules, we also have -- it allows a person
22 licensed under Illinois Architectural Practice Act to
23 sign off on the permits.

24 I just wanted to get some background from

1 the Agency as to who are these people that are
2 allowed to sign off under the Illinois Architectural
3 Practice Act? Will they have expertise in
4 groundwater issues or --

5 I realize that the Board regulations in
6 most of our rules, it's either the professional
7 engineers or the geologists, and this is an old rule
8 and I just wanted to get the Agency's comments as to
9 whether we should still read in that part of the
10 rule.

11 MR. MCMILLAN: That part of the rule, as
12 you said, has preexisted these amendments and
13 corrections, and I don't know where that originated
14 from.

15 I do believe that we do still have
16 occasionally an architect that does submit plans to
17 the Agency. It's not a very frequent thing, but it
18 does still occur.

19 MR. RAO: So do you want to take a look
20 at it and get back to us whether you still want it
21 retained, or if a person who's licensed under that
22 Act is also allowed to sign off on groundwater issues
23 and geologic -- hydro geologic issues, if there are
24 any?

1 MR. MCMILLAN: Yeah, we can take a look
2 at it.

3 MS. FLOWERS: Are you suggesting that if
4 we would want to limit it in any way that you would
5 accept some language?

6 MR. RAO: Yeah. If it's possible to do
7 that, that would be fine, yes.

8 In response to question 3(b) -- I think
9 this is in response to Captain Curry's questions --
10 the Agency indicated that it intends to incorporate
11 relevant design standards found in recommended
12 standards for water works in a future Board proposal.

13 I just wanted to ask the Agency
14 whether -- regarding this provision, should we wait
15 until the next rulemaking or go ahead and adopt what
16 you have proposed in the section for now, or should
17 that be dealt with entirely in a different
18 rulemaking?

19 MR. MCMILLAN: In reference to a previous
20 response, our intent is that in the future Board
21 proposal that we will no longer incorporate by
22 reference the Ten States Standards, but we will
23 include only those parts of the Ten States Standards
24 utilized in Illinois which will afford a public

1 comment and Board comments on the use of those.

2 However, at the present time, we still
3 rely on those design criteria, and so we do need
4 those incorporated by reference for this rulemaking.

5 MR. RAO: Okay. And I have a similar
6 question regarding question number 6. I think this
7 is in regards to Section 602.107(a).

8 Agency's response indicates that there's
9 some language changes that are being suggested
10 regarding the 80 percent exceedance, and again, the
11 Agency states that it expects further details will be
12 added in the following rulemaking.

13 And, again, my question was, should we
14 wait on this? Because the Board also had some
15 concerns about how you implement that provision for
16 putting a community water supply on the Critical
17 List.

18 Will this language that you have proposed
19 now with the changes, will that work for the Agency,
20 or should we wait on that one?

21 MR. MCMILLAN: I believe that the Agency
22 has heard sufficient comment that we believe that we
23 should probably come up with either a definition for
24 the 80 percent in the 60 -- in 601 or possibly in

1 602, and if the Board feels it's appropriate, we'd
2 like to propose some language at a future time.

3 MR. RAO: When you say future, in final
4 comments?

5 MR. MCMILLAN: Yeah, in final comments.

6 MR. RAO: That would be good. All right.

7 I think this one is on question number 8.
8 The Agency responded to Captain Curry's comments by
9 saying it does not object to the requested language
10 change in Section 602.113(c), and -- I can just go to
11 that section. And this relates to the pesticides
12 permit, so that all algicide permit durations are
13 five years in length and the Agency agreed to it.

14 I just wanted to clarify whether if there
15 would be any situations where the Agency would issue
16 a permit for a shorter period of time; and, if so, if
17 the proposed change now allows the Agency to do that,
18 or do you have to issue a five-year permit every time
19 a permit is issued for algicide?

20 MR. COOK: It will be a five-year permit,
21 so we would not be able to issue it for a shorter
22 period of time and we don't see a need to do that.
23 We're okay with the five years.

24 MR. RAO: So if anyone applies, they get

1 a five-year permit.

2 MR. COOK: Yes.

3 MR. RAO: If the Agency's okay with that,
4 I'm fine with that.

5 Yeah, that's all I had.

6 HEARING OFFICER POWELL: Are there any
7 further questions from the Board for these witnesses
8 or any participants here today?

9 Okay. Well, seeing none, we can turn
10 quickly to a statutory issue which is, under Section
11 27(b) of the Environmental Protection Act, the Board
12 has to request the department, now known as the
13 Department of Commerce and Economic Opportunity,
14 conduct an economic impact study of proposed rules
15 before the Board adopts them.

16 The Board then must make either the
17 economic impact study or the department's explanation
18 for not conducting one available to the public at
19 least 20 days before public hearing.

20 In a letter dated May 28, 2015, the Board
21 Chairman, Dr. Deanna Glosser, requested that the
22 department conduct an economic impact study of this
23 proposal. The Board requested a response by no later
24 than July 10, 2015. The Board has received no

1 response from DCEO to this request.

2 Is there anyone who would like to testify
3 regarding the request from the Board to DCEO or the
4 lack of a response?

5 Okay. Seeing no one, I'd like to go off
6 the record just briefly to collect the sheets for
7 testimony and comments.

8 (A brief recess was taken.)

9 Okay. If we could go back on the record,
10 please.

11 I'm reviewing the sheets, the signup
12 sheet for those who wish to testify today, and I see
13 no names, which is -- for the record, does anyone
14 wish to offer further testimony today?

15 Okay. Seeing none, I'll turn to the
16 signup sheet for comments, and I do see one name on
17 here, Captain Michael D. Curry, as a citizen.

18 Sir, would you please come forward? And
19 probably the easiest spot is right there and offer
20 any comments you wish to make.

21 CAPTAIN CURRY: Thank you and good
22 morning.

23 HEARING OFFICER POWELL and BOARD: Good
24 morning.

1 CAPTAIN CURRY: My name's Michael D.
2 Curry. I reside in Nashville, Illinois, and if it's
3 okay, I'd like to read my comments, which is
4 basically reading what my original comments were
5 under Section 602.107(a), which was submitted to the
6 Hearing Officer, I think, on the June -- July 20th.

7 Regarding Critical Review, approaching a
8 violation, basically, the 80 percent is fine with me,
9 but how is that determined, 80 percent of the
10 capacity rating?

11 So here was my original comment. What
12 time interval/duration is to be used for
13 determination of the 80 percent rate exceedance?
14 Does the 80 percent rate exceedance apply to one day
15 of operation, one consecutive week of operation, or
16 one month of operation? Prior discussions with the
17 Agency implied that the 80 percent rate exceedance
18 would be based on the average day during the maximum
19 week (I presumed for seven consecutive days)
20 production period.

21 I respectfully recommend that the 80
22 percent rate exceedance apply to average day treated
23 water volume during the maximum consecutive seven day
24 production period during any calendar year, except

1 for high service pumps that deliver treated water
2 from the treatment plant to the distribution system.

3 I respectfully recommend that the 80
4 percent rate exceedance for the high service pumps
5 apply to average day treated water pump each into the
6 distribution system during the maximum consecutive
7 seven day production period during any calendar year.

8 Do quantity regulations include, for
9 example, raw water or high serviced pump capacity
10 with the largest unit out of service?

11 I recommend that the specific capacity be
12 included with the Board's regulations and the
13 specific capacity criteria should be made available
14 for public review prior to final adoption.

15 That's my comment.

16 HEARING OFFICER POWELL: Thank you,
17 Captain Curry.

18 CAPTAIN CURRY: Thank you.

19 HEARING OFFICER POWELL: Okay. Is there
20 anyone else here today who would like to offer
21 comments?

22 Okay. Seeing none, let's just go off the
23 record to discuss some procedural issues.

24 (There was then had an off-the-record

1 discussion.)

2 HEARING OFFICER POWELL: Going off the
3 record, there was discussed a procedural issue of
4 filing post hearing comments. Section 102.108 of the
5 Board's rules allows persons to file written comments
6 within 14 days after the Board receives this
7 transcript.

8 The Board expects to receive this
9 transcript of this hearing on or before August 24th,
10 2015. Very soon after the Board receives the
11 transcript, it will be available on the Board's
12 website at www.ipcb.state.il.us under this docket
13 number R15-22.

14 In order to set the deadline clearly, I
15 will issue a Hearing Officer Order very shortly after
16 that transcript is filed with the Board, but just so
17 everyone knows, if the comments -- if the transcript,
18 excuse me, is filed on August 24th, then the 14-day
19 deadline would be September 7th, 2015. Oh, okay.
20 That's Labor Day, actually, so September 8, 2015,
21 will be the 14th day.

22 Anyone may file written public comments
23 in this rulemaking with the Clerk of the Board.
24 Comments may be filed electronically through the

1 Board's Clerk's Office Online, or COOL, and any
2 questions about electronic filing through COOL should
3 be directed to the Clerk's office.

4 Filings with the Board, whether paper or
5 electronic, must also be served on the Hearing
6 Officer and on all those persons on the service list.

7 Before filing, please check with the
8 Board's Clerk to ensure that you have the most recent
9 version of the service list.

10 If anyone has any questions about any
11 procedural aspects of this rulemaking, my contact
12 information is posted on the Board's web page.

13 Are there any other matters that need to
14 be addressed at this time?

15 Seeing none, I'd like to thank everyone
16 for participating today and this hearing is
17 adjourned.

18 (Hearing adjourned at 10:44 a.m.)
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STATE OF ILLINOIS)
) SS
COUNTY OF MACON)

I, Lisa K. Hahn, Certified Shorthand Reporter and Notary Public in the State of Illinois, County of Macon, do hereby certify that I reported in shorthand the proceedings had at the hearing aforesaid, and that the foregoing is a true, complete and correct transcript of the proceedings of said hearing as appears from my stenographic notes so taken and transcribed under my personal direction.

Witness my official signature in and for the County of County, State of Illinois, on this 19th day of August, 2015.

Notary Public -- CSR, RMR
CSR #084.2149

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