

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

VILLAGE OF CARLOCK,	)	
	)	
Petitioner	)	
	)	
v.	)	PCB 2015-110
	)	(Water Well Setback Exception)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board Illinois EPA's APPEARANCE and ILLINOIS EPA'S RESPONSE, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:     /s/Joanne M. Olson      
Joanne M. Olson  
Assistant Counsel  
Division of Legal Counsel

Date: December 31, 2014

Joanne M. Olson #6293500  
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**APPEARANCE**

The undersigned hereby enters her appearance as an attorney on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
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**ILLINOIS EPA'S RESPONSE**

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by and through its counsel, and pursuant to Sections 14.2 the Environmental Protection Act (“Act”) (415 ILCS 5/14.2) and 35 Ill. Adm. Code 106.306, hereby submits its Response to the Petition for Setback Exception ("Petition") filed by Village of Carlock ("Petitioner" or "Village").

**I. INTRODUCTION**

The Village of Carlock filed a petition with the Illinois Pollution Control Board ("Board") and Agency on December 12, 2014, requesting an exception to the minimum setback zone for two community wells owned and operated by the Village of Carlock. The wells are identified as Well #1 (Agency ID# WL40027) and Well #2 (Agency ID# WL40028) both of which have 200 foot minimum setback zones. The exception is for the construction and operation of a septic system which is not a private sewage disposal system and was deemed to have the capacity to serve more than 20 individuals per day. As such, the septic system is an injection well, which is defined as a potential route in Section 3.350 of the Act.

## **II. LEGAL BACKGROUND**

Sections 14.2 of the Act establishes minimum setback zones of 200 or 400 feet for all new potential routes; no new potential routes may be placed, without a wavier or exception, within 200 or 400 feet of an existing CWS or other potable water supply well. 415 ILCS 5/14.2(a). The exception process is set forth in Section 14.2(c) and Subpart C of Part 106 of the Board's procedural rules.

To obtain an exception from the minimum setback zone for community water supply wells, the owner of the new potential route must file a petition with the Board and Agency. 415 ILCS 5/14.2(c). The petition must also contain a general description of the potential impacts of the potential route on groundwater and the potable well, and an explanation of the applicable technology that will be used to minimize risk. *Id.* The Board's regulations further specify that the petition must state the nature of the petitioner's operation, the scope of the evaluation supporting the evaluation, the nature of the exception, and the reasons for the exception. 35 Ill. Adm. Code 106.304. The petitioner is required serve a copy of the petition on all water supplies affected by the proposed exception. 415 ILCS 5/14.2(c); 35 Ill. Adm. Code 106.302(b).

Both the Act and the Board's regulations set forth the burden of proof. The petitioner must show (1) compliance with the setback zone would pose an arbitrary and unreasonable hardship; (2) petitioner will use best available technology; (3) the maximum feasible setback zone will be utilized; and (4) the location of the potential source or route does not constitute a significant hazard to the potable water supply well. 415 ILCS 5/14.2(c); 35 Ill. Adm. Code 106.310.

## **III. NOTIFICATION OF WATER SUPPLY**

A Certificate of Service attached to the Petition indicates that the Village of Carlock, the only affected water supply, has been provided with a copy of the petition.

#### **IV POTENTIAL IMPACTS TO GROUNDWATER AND WELLS**

The Petitioner states that the risk from the operation of the potential route is low. In support of this statement the Petitioner has provided well logs for Well #1 and Well #2. The well logs demonstrate the presence natural geologic materials located in the subsurface that will limit and slow the migration of sanitary septic effluent. Further, the well logs provide construction details for the wells showing that they utilize a confined aquifer system, not likely to be impacted by near surface disposal activities.

It is not clear from the Petition, since the new water treatment plant is for the treatment of arsenic in drinking water and the treatment plant is served by the new septic system, whether the septic system will receive only sanitary waste, or will also receive plant waste with concentrated arsenic. The Petitioner should clarify this issue since the biological treatment provided by a septic system would not effectively treat arsenic, which could then pose a danger to shallow groundwater resources.

#### **V. ARBITRARY AND UNREASONABLE HARDSHIP**

The Petitioner states that denial of the exception would pose an arbitrary and unreasonable hardship. In support of this statement, the Petitioner provides the following information. The Village of Carlock does not have a public sewer system. The water treatment building was previously served by a septic system that was closer to the wells than the current system for which the exception is being requested. The rest of the Village is served by individual septic systems. The Petitioner states that the only two alternatives available to the Village are buying additional property or abandoning Wells #1 and #2 and drilling a new well near Well #3, which is located outside of the Village. Either additional property or a new well would add a significant financial burden to the Village, and hence it's residents. This is particularly burdensome since the Village

was required to borrow in excess of \$1,000,000 to upgrade their water treatment plant to comply with USEPA Administrative Order, Docket No. 1100107 for the treatment of arsenic in the Village's drinking water. The Agency believes the Petitioner should provide cost estimates for the purchase of additional property or a discussion of the availability of such property proximate to the site, and the cost of a new well and associated infrastructure to support their assertion that denial of an exception will result in an arbitrary and unreasonable hardship on the Village.

#### **VI. BEST AVAILABLE TECHNOLOGY**

The Petitioner has committed to having annual inspection and maintenance of the system by a licensed wastewater operator and annual pumping of the tank component of the system. In addition, the proposed system will be installed under the direction of a licensed installer, under the purview of the McLean County Health Department. Well #1 and Well #2 will continue to be monitored monthly for microbial contaminants. The Agency agrees that the actions proposed by the Petition do represent best available technology for a septic system.

#### **VII. MAXIMUM FEASIBLE SETBACK**

The Agency agrees that the Petitioner has utilized the maximum feasible setback distance considering the site configuration and well locations.

#### **VIII. SIGNIFICANT HAZARD**

Based on the information contained in the Petition, the Agency cannot determine whether the proposed potential route poses a significant hazard to the Village of Carlock Well #1 and Well #2. The Petition and record in this case do not contain an explanation of whether the waste stream discharged to the septic system contains waste other than sanitary waste.

**IX. RECOMMENDATION**

The Agency recommends that the Board deny the Petition because the Petitioner has failed to provide adequate proof that compliance with the setback zone would pose an arbitrary and unreasonable hardship and that the location of the septic system would not constitute a significant hazard to the community water supply well. The Agency requests that the Petitioner submits the following for the record, after which time the Agency will reevaluate its recommendation:

1. Cost estimates for additional property outside the setback zones of Well #1 and Well #2 or the availability of such property;
2. Cost estimates of a new well and associated infrastructure; and
3. An explanation of whether wastewater with concentrated arsenic will be discharged into the proposed septic system.

WHEREFORE, the Illinois EPA asks the Board respectfully submits its Response.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

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Assistant Counsel  
Division of Legal Counsel

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**CERTIFICATE OF SERVICE**

Joanne M. Olson, Assistant Counsel for the Illinois EPA, herein certifies that she has served a copy of the foregoing NOTICE OF FILING; APPEARANCE; and ILLINOIS EPA'S RESPONSE upon

Village of Carlock  
James M. Larimore  
304 South Perry  
Carlock, IL 61725

Patrick B. McGarth  
113 S. Main St.  
P.O. Box 139  
Makinaw IL 61755

by mailing, unless otherwise noted on the Service List, a true copy thereof in an envelope duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois on December 31, 2014.

\_\_\_\_\_  
/s/Joanne M. Olson  
Joanne M. Olson