

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

IN THE MATTER OF:)	
)	
SANGAMON VALLEY FARM SUPPLY,)	
)	
Petitioner,)	
)	
v.)	PCB Case No. 06-43
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY and)	
VILLAGE OF SAYBROOK, ILLINOIS)	
)	
Respondents.)	

PETITIONER'S POST HEARING BRIEF

NOW COMES the Petitioner, Sangamon Valley Farm Supply, by and through its attorneys, Sorling, Northrup, Hanna, Cullen & Cochran, Ltd., Charles J. Northrup, of counsel, and pursuant to Section 101 of the Illinois Pollution Control Board's regulations, and the modified briefing schedule adopted by the parties, hereby submits its Post Hearing Brief in the above matter. In support hereof, Sangamon Valley Farm Supply states as follows:

I. Background

A. Procedural Background

On September 19, 2005, Sangamon Valley FS filed its initial Petition pursuant to Section 14.2 of the Illinois Environmental Protection Act ("Act") seeking an exception to community water well setback requirements applicable to the Village of Saybrook, McLean County, Illinois. On October 11, 2005, the Illinois Environmental Protection Agency ("Illinois EPA") filed its Response to the Petition and concluded that it would recommend granting the exception provided certain additional information was provided by the Petitioner. In addition, on November 7, 2005 the Board requested written answers to certain questions about the proposal.

After consultations with the Illinois EPA, on March 31, 2006 Petitioner filed an "Amended Petition for Community Well Setback Exception." On April 24, 2006 the Illinois EPA filed its Response to the Amended Petition and recommended that the Petition be granted. On June 1, 2006, the Board reiterated its earlier questions and on July 28, 2006 Sangamon Valley FS responded to those questions. On August 9, 2006 a public hearing was held in Bloomington, McLean County on the Petition. Sangamon Valley FS presented the testimony of one witness (Mr. Jerry Wilson, Ideal Environmental Engineering, Inc.) and one Illinois EPA witness (Mr. Lynn Dunaway, Bureau of Water) responded to questions from the Hearing Officer. In addition to the testimony of Mr. Wilson in support of the Petition, the Illinois EPA recommended that the Board grant the Petition (Tr. pg. 7).

B. Substantive Background

Although many of these matters are set forth in the Amended Petition and were discussed at the hearing, some brief substantive background may be useful for the Board. Sangamon Valley FS formerly owned and operated a service station at the corner of Main and Lincoln Streets in the Village of Saybrook (Am. Pet. at 3). The Sangamon Valley FS service station ceased operations in approximately 1998 and at that time a number of underground storage tanks were removed (Tr. pg. 11). At the time of tank removal it was discovered that gasoline had leaked from at least some of the underground storage tanks (Am. Pet. at 3). Sangamon Valley FS immediately entered the Illinois EPA's leaking underground storage tank program (Id.). Under this program, and with the approval of the Illinois EPA, Sangamon Valley FS has removed approximately 330 cubic yards of impacted soil, applied oxygen release compound ("ORC") to the excavation, installed 7 groundwater monitoring wells, and injected an additional 8,000 lbs of ORC to the shallow groundwater through 317 injection points in the vicinity of the

facility (Am. Pet. at 3-4). This remediation has proven successful but additional work needs to be done (Tr. at 12). Accordingly, Sangamon Valley FS prepared a second Corrective Action Plan and Budget and proposed to the Illinois EPA that another round of ORC injections be performed (Am. Pet. at 5). This proposal was rejected because the proposed ORC injection points were all located within the 400 foot community water well setback (Am. Pet. at 5-6). In order for Sangamon Valley FS to appropriately place the new ORC injection points and for this remediation to be completed, Sangamon Valley FS needs to obtain an exception to the 400 foot community water well setback (Tr. at 11). As noted above, the Illinois EPA has recommended granting the exception.

II. Argument

A. Applicable Statutes and Regulations

Section 14.2 of the Act states in part:

- (a) Except as provided in subsections (b), (c) and (h) of this Section, no new potential route or potential primary source or potential secondary source may be placed within 200 feet of any existing or permitted community water supply well or other potable water supply well.
- (c) The Board may grant an exception from the setback requirements of this Section . . . to the owner of a new potential route. 415 ILCS 5/14/2(a), (c) (2002).

Section 3.350 of the Act defines “potential route” as:

[A]ll injection wells A new potential route is:

- (1) a potential route which is not in existence or for which construction has not commenced at its location as of January 1, 1988, or
- (2) a potential route which expands laterally beyond the currently permitted boundary or, if the potential route is not permitted, the boundary in existence as of January 1, 1988. 415 ILCS 5/3.350 (2002).

Pursuant to Section 14.2(c) of the Act, because the proposed ORC injection points would be considered a “new potential source or route” of contamination, Sangamon Valley FS was required to file a petition with the Board that included: (1) a description of the potential impacts of the potential source or route on groundwater and the affected water well; and (2) an explanation of the applicable technology-based controls Sangamon Valley FS would employ to minimize the potential for contamination of the potable water supply well. Accordingly, Sangamon Valley FS initiated this proceeding by filing such a Petition that satisfies these two requirements.

B. Standard of Review

Pursuant to Section 14.2 of the Act, the Board must grant the requested water well setback exception when the following elements are established by adequate proof:

[T]hat compliance with the setback requirements of this Section would [1] pose an arbitrary and unreasonable hardship upon the petitioner, [2] that the petitioner will utilize the best available technology controls economically achievable to minimize the likelihood of contamination of the potable water supply well, [3] that the maximum feasible alternative setback will be utilized and [4] that the location of such potential source or potential route will not constitute a significant hazard to the potable water supply well.

415 ILCS 5/14.2(c) (2004); Paul Johnson, Inc. v. Illinois EPA and the City of Waterman, PCB No. 05-109 (May 19, 2005). All of these elements have been satisfied in this case and Sangamon Valley FS should be granted the water well exception.

C. Discussion of Required Elements

1. Arbitrary and Unreasonable Hardship

In its Petition and at hearing, Sangamon Valley FS demonstrated that compliance with the 400 foot setback would pose an arbitrary and unreasonable hardship on Sangamon Valley FS. First, the sole remaining act of Sangamon Valley FS is to complete this remediation (Tr. at 13-

14). Once the Illinois EPA issues its “No Further Remediation Letter” to Sangamon Valley FS the corporation will be dissolved (Id.). Accordingly, failing to grant the exception will require the corporate form to be maintained when it is the intent of the President of the corporation to dissolve it. Second, failure to grant the exception will not allow Sangamon Valley FS to obtain a No Further Remediation letter from the Illinois EPA. The Board has previously found that such a failure to obtain a NFR letter constitutes an arbitrary and unreasonable hardship. Johnson Controls, Inc. v. Illinois EPA et al., PCB No 05-109 at pg. 10 (May 19, 2005). Third, granting the exception will allow the Village to avoid an unnecessary hardship as well. By granting the exception, the Village will secure clean water for its residents and avoid the cost of drilling new water supply wells (Tr. at 13). Finally, the only witness who testified at hearing specifically opined that failing to grant the exception would pose an arbitrary and unreasonable hardship (Tr. at 14).

2. **Best Available Technology to Minimize Contamination**

In its Petition and at hearing, Sangamon Valley FS demonstrated that Sangamon Valley FS's proposal to inject ORC into the groundwater as a method of completing the site remediation utilizes the best available control technology economically achievable to minimize the likelihood of contamination to the water supply well. The proposed ORC injection, alternatively referenced as “enhanced natural attenuation” or “in-situ bioremediation,” was compared against a number of other remedial alternatives. First, a “pump and treat” technology was reviewed. However, this technology was determined not to be feasible at this site. The costs of such a system were prohibitive and, in any event, the McLean County authorities would not allow necessary work to be performed in a County right-of-way (Tr. at 16). In addition, the length of remediation may exceed 10 years with continual maintenance costs (Tr. at 17). Second, an “air sparging” system

was reviewed. Here, too, the hearing's only witness testified that "air sparging" was not the best available technology (Tr. at 19). "Air sparging" is a technology that injects air into contaminated groundwater which creates bubbles which in turn releases vapors which are then captured in a soil venting system (Tr. at 17 – 18). Such a system at this site is not achievable because of the depth of the groundwater and the problems associated with installing a soil venting system (Tr. at 18). In addition, "air sparging" also takes a significant amount of time to be effective and requires substantial maintenance costs (Tr. at 18 -19). Sangamon Valley FS also reviewed the possibility of replacing and relocating the water wells. This, however, was identified to be too expensive (in excess of \$750,000) (Tr. at 20). Finally, only the proposed ORC injection proposal was identified as meeting the applicable standard. It is a proven technology at this site and elsewhere; it has no ongoing maintenance costs; it has no disruptive impact on local roadways; compared to the other alternatives its cost is roughly a quarter or a third of those other technologies; and it may require only 12 to 18 months before the site is clean (Tr. at 22-23).

3. Use of Maximum Feasible Alternative Setback

In its Petition and at hearing, Sangamon Valley FS demonstrated that Sangamon Valley FS's proposal to inject ORC into the groundwater as a method of completing the site remediation utilizes the maximum feasible alternative setback. Sangamon Valley FS's technical expert testified that the injections will stay as far away from the wells as possible, in this case approximately 75 feet (Tr. at 24). In addition, the closest injection points are designed as a barrier using lesser amounts of ORC than directly in the plume (Tr. at 25). Also, Sangamon Valley FS is committed to working with the Illinois EPA and the Village of Saybrook on specific injection point placement (Tr. at 25).

4. No Significant Hazard to Water Supply Well

Finally, Sangamon Valley FS demonstrated in its Petition and at hearing that its proposal to inject ORC into the groundwater as a method of completing the site remediation will not constitute a significant hazard to the Village of Saybrook's water wells. Sangamon Valley FS has provided a copy of the ORC MSDS from the manufacturer as an exhibit to its Petition. At hearing, Sangamon Valley's expert indicated that the ORC is a calcium based material, much like an antacid (Tr. at 26). In addition, Sangamon Valley FS will be monitoring the well closest to the injection points for any impact caused by the ORC (Tr. at 46). If testing identifies any injected materials, an amendment to the Corrective Action Plan will be prepared (Tr. at 47). On this point, it is again important to note that the Illinois EPA has recommended that the Board grant the exception.

III. Conclusion

WHEREFORE, for the above reasons, Petitioner Sangamon Valley Farm Supply respectfully requests that the Board grant it an exception from the setback requirements of Section 14.2 of the Act so that it may complete its proposed remedial action at the identified site.

Respectfully submitted,

SANGAMON VALLEY FARM SUPPLY

By: 

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PROOF OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was electronically filed with the Pollution Control Board:

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