

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VILLAGE OF MORTON)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY)
)
 Respondent.)

PCB No. 10-083

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MAY 17 2010
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

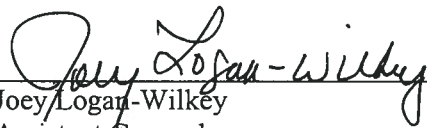
To: Mr. Thomas Davies
1600 S. 4th Avenue
Suite 137
Morton, IL 61350
(309)266-6211

Carol Webb
Hearing Officer
Illinois PCB
1021 North Grand Ave. East
P.O. Box 19274
Springfield, IL 62794-9274

ORIGINAL

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the **Appearance of Joey Logan-Wilkey** on behalf of the Illinois Environmental Protection Agency in this matter, and the **Illinois EPA Response to Petition for Water Well Setback Exception**, copies of which are herewith served upon you.

Respectfully submitted,


Joey Logan-Wilkey
Assistant Counsel

May 14, 2010

Joey Logan-Wilkey
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD


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VILLAGE OF MORTON,)
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Petitioner,)
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v.)
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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
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Respondent.)

PCB No. 10-083

APPEARANCE

I hereby file my appearance in this proceeding, on behalf of the Illinois Environmental Protection Agency.


Joey Logan-Wilkey
Assistant Counsel

 ORIGINAL

Joey Logan-Wilkey
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VILLAGE OF MORTON,)
Petitioner)
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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB No. 2010-083
(Petition for Water Well
Setback Exception)

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ORIGINAL

**ILLINOIS EPA RESPONSE TO PETITION FOR
WATER WELL SETBACK EXCEPTION**

NOW COMES the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by Joey Logan-Wilkey, one of its attorneys, and respectfully submits its RESPONSE TO THE PETITION FOR A WATER WELL SETBACK EXCEPTION, (“Response”) according to 35 Ill. Adm. Code 106.306(a). This Response is in reply to the Petition filed with the Illinois Pollution Control Board (“Board”) on April 14, 2010, by Petitioner VILLAGE OF MORTON, (“Morton”) requesting a Water Well Setback Exception pursuant to Section 14.2 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/14.2 (2008).

INTRODUCTION

1. The Illinois EPA received the Petition for the Water Well Setback Exception on April 13, 2010. It has been given Illinois EPA file number 166-10. A petition requesting an exception to the minimum setback zone of three of Morton’s community water supply wells, Wells 7, 9, and 10, has been filed with the Board and the Illinois EPA. The Petition states that Wells 7, 9,

and 10 each have 200 foot minimum setback zones, and that the proposed new potential secondary source falls within the minimum setback zones of all three wells.

NOTIFICATION OF WATER SUPPLY

2. The Petitioner did not include an affidavit stating that the Village of Morton Public Water Supply has been notified of the Petition. According to the Petition, the Village of Morton Public Water Supply is the only owner of a potable water supply well that is within 1,000 feet of the proposed Potential Source.

RELIEF SOUGHT BY THE PETITIONER

3. Petitioner requests a water well setback exception so that it may construct a de-icing agent storage facility (“Facility”) on property owned by the Village and located between 450 Detroit Avenue and 500 Detroit Avenue in Morton, Tazewell County, Illinois. The proposed Facility would be located near the Public Works Garage at 450 Detroit Avenue, which houses the trucks that apply salt during hazardous road conditions. The Public Water Supply treatment plant is located at 500 Detroit Avenue. The proposed Facility would be located within 200 feet of Morton’s Wells 7, 9, and 10.

4. According to Exhibit A to the Petition, the proposed Facility would not be located within the 200 foot setback zone of Well 9. Therefore, no exception from the setback zone of Well 9 is required.

5. The Village has a remote de-icing storage facility that can hold 150 tons of de-icing agents. There is no room to expand the storage facility at the remote location. Therefore,

Morton is proposing to construct a new de-icing agent storage facility between 450 and 500 Detroit Avenue.

6. The Village sometimes requires more than 150 tons of de-icing agent during single storm events, and must pay for the delivery of additional rock salt due to limited space at the remote storage location.

7. The proposed Facility falls within the definition of a “new potential secondary source” to groundwater, pursuant to Section 3.355 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/3.355 (2008). Pursuant to Section 14.2(a) of the Act, 415 ILCS 5/14.2(a) (2008), the installation of any “new potential secondary source” is prohibited within 200 feet of an existing community water supply well. The Petitions states that the proposed Facility would be located within 200 feet of Morton’s existing community water supply Wells 7, 9, and 10. Therefore, the Village is requesting a water well setback exception from the Illinois Pollution Control Board (“Board”) for the construction of the de-icing agent storage Facility, pursuant to Section 14.2(c) of the Act, 415 ILCS 5/14.2(c)(2008).

LAW

8. The Act provides for a minimum setback zone, and exceptions from such setback zones, at 415 ILCS 5/14.2 (2008). These provisions, in pertinent part, are as follows:

A minimum setback zone is established for the location of each new potential source or new potential route as follows:

(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.

(b) The owner of a new potential primary source or a potential secondary source or a potential route may secure a waiver from the requirement of subsection (a) of this Section for a potable water supply well other than a community water supply well. A written

request for a waiver shall be made to the owner of the water well and the Agency. Such request shall identify the new or proposed potential source or potential route, shall generally describe the possible effect of such potential source or potential route upon the water well and any applicable technology-based controls which will be utilized to minimize the potential for contamination, and shall state whether, and under what conditions, the requestor will provide an alternative potable water supply. Waiver may be granted by the owner of the water well no less than 90 days after receipt of the request unless prior to such time the Agency notifies the well owner that it does not concur with the request.

The Agency shall not concur with any such request which fails to accurately describe reasonably foreseeable effects of the potential source or potential route upon the water well or any applicable technology-based controls. Such notification by the Agency shall be in writing, and shall include a statement of reasons for the nonconcurrence. Waiver of the minimum setback zone established under subsection (a) of this Section shall extinguish the water well owner's rights under Section 6b of the Illinois Water Well Construction Code but shall not preclude enforcement of any law regarding water pollution. If the owner of the water well has not granted a waiver within 120 days after receipt of the request or the Agency has notified the owner that it does not concur with the request, the owner of a potential source or potential route may file a petition for an exception with the Board and the Agency pursuant to subsection (c) of this Section.

No waiver under this Section is required where the potable water supply well is part of a private water system as defined in the Illinois Groundwater Protection Act, and the owner of such well will also be the owner of a new potential secondary source or a potential route. In such instances, a prohibition of 75 feet shall apply and the owner shall notify the Agency of the intended action so that the Agency may provide information regarding the potential hazards associated with location of a potential secondary source or potential route in close proximity to a potable water supply well.

(c) The Board may grant an exception from the setback requirements of this Section and subsection (e) of Section 14.3 to the owner of a new potential route, a new potential primary source other than landfilling or land treating, or a new potential secondary source. The owner seeking an exception with respect to a community water supply well shall file a petition with the Board and the Agency. The owner seeking an exception with respect to a potable water supply well other than a community water supply well shall file a petition with the Board and the Agency, and set forth therein the circumstances under which a waiver has been sought but not obtained pursuant to subsection (b) of this Section. A petition shall be accompanied by proof that the owner of each potable water supply well for which setback requirements would be affected by the requested exception has been notified and been provided with a copy of the petition. A petition shall set forth such facts as may be required to support an exception, including a general description of the potential impacts of such potential source or potential route upon groundwaters and the affected water well, and an explanation of the

applicable technology-based controls which will be utilized to minimize the potential for contamination of the potable water supply well.

The Board shall grant an exception, whenever it is found upon presentation of adequate proof, that compliance with the setback requirements of this Section would pose an arbitrary and unreasonable hardship upon the petitioner, that the petitioner will utilize the best available technology controls economically achievable to minimize the likelihood of contamination of the potable water supply well, that the maximum feasible alternative setback will be utilized, and that the location of such potential source or potential route will not constitute a significant hazard to the potable water supply well.

Not later than January 1, 1988, the Board shall adopt procedural rules governing requests for exceptions under this subsection. The rulemaking provisions of Title VII of this Act and of section 5-35 of the Illinois Administrative Procedure Act shall not apply to such rules. A decision made by the Board pursuant to this subsection shall constitute a final determination.

415 ILCS 5/14.2(a), (b), and (c) (2008)

GENERAL DESCRIPTION OF POTENTIAL IMPACTS

9. Section V of the Petition states that the proposed Facility will not pose a significant hazard to the existing community water supply wells, pursuant to 35 Ill. Adm. Code 106.310(d). The Petition states that the storage facility will have a concrete floor with curbing, walls, and a roof to prevent any effects from wind and precipitation. In order to prevent runoff, the Facility is designed to have curbing and sloping pavement with a catch basin to collect any runoff, which will enter the sanitary sewer system through a drain.

10. The Petition states that the aquifer for the Village's Wells 7, 9, and 10 begins 200 feet below ground surface. The soil above the wells is comprised mainly of clay. Due to the depth of the wells and the design of the Facility, the Village does not anticipate that the proposed new potential secondary source will constitute a significant hazard to the wells.

11. The Illinois EPA's Source Water Assessment for the Village's wells has determined that they are not susceptible to inorganic or organic compound contamination.

12. The Petition states that the Village will construct three monitoring wells to conduct annual testing for TDS and chlorides, and will submit the results to the Illinois EPA, pursuant to 35 Ill. Adm. Code 616 and 620. These monitoring wells would alert the Village and the Illinois EPA in the event that any unknown release of contaminants from the Facility had occurred prior to contaminants reaching the Village's community water supply wells.

13. The Village has demonstrated that the location of the Facility within the setback zone does not pose a significant hazard. See the significant hazards section of this response for further discussion.

ARBITRARY AND UNREASONABLE HARDSHIP

14. The Petition provides an economic analysis of the cost of purchasing de-icing agents during the off-season and storing the agents in the proposed Facility versus the cost of purchasing smaller quantities during the winter months and having them delivered. The petition states that the premium paid for rock salt during winter months is \$24/ton. The Village has estimated that it can save \$43,200 by purchasing rock salt during the off-season and storing it in the proposed Facility.

15. The Petition states that the proposed location of the Facility is the only suitable parcel of land owned by the Village.

16. The Illinois EPA believes that the Village has met its burden of demonstrating that compliance with the setback requirements would pose an arbitrary and unreasonable hardship pursuant to 35 Ill. Adm. Code 106.310(a).

BEST AVAILABLE TECHNOLOGY CONTROLS

17. The Petitioner addresses the need to contain the de-icing agents, protect the de-icing agents from precipitation and wind, provide regular inspection and repair of the containment structures and properly manage any storm water that may come in contact with de-icing agents. The Illinois EPA believes that the Petitioner has adequately demonstrated that the best available technology controls economically achievable, to minimize the likelihood of contamination, will be used.

MAXIMUM FEASIBLE ALTERNATIVE SETBACK

18. The Petitioner provides a site map (“Exhibit A”) that displays the location of the proposed Facility, including the building, curbed pavement and the proposed groundwater monitoring wells. Because of the orientation of Wells 7 and 10 relative to the proposed Facility, moving the Facility further from either well will move it closer to the other. As discussed in the Illinois EPA’s response in Paragraph 4 above, Exhibit A indicates that no part of the proposed Facility is within 200 feet of Well 9. Though certain configurations could have included the setback zone of Well 9, the Petitioner appears to have selected a location for the Facility that is outside of the setback zone of Well 9. Given the considerations of well locations, property lines and the need for safe loading and unloading operations, it is the Illinois EPA’s opinion that the maximum feasible setback zone is being used.

ENVIRONMENTAL IMPACT/SIGNIFICANT HAZARD TO THE POTABLE WATER SUPPLY WELL

19. Section 14.2(c) of the Act states that the Petitioner must make a demonstration to the Board that the potential source is not a significant hazard to the potable well. The Petitioner has provided the geologic logs for the community wells near the proposed storage facility. Based on a review of the logs provided, the geologic material between the land surface and the aquifer utilized by the community wells is composed predominantly of clay. Because clay has a low permeability (i.e. fluids pass through clay slowly) contaminants that may enter the ground tend not to move very far nor do they move rapidly. Though clay dominates the upper 200 feet of glacial material in this area, some sand and gravel layers are noted. The groundwater monitoring system required by 35 IAC 616, and proposed in the petition will protect the community wells by providing an early warning should an unknown release occur. In addition, the monitoring system will provide protection to the groundwater resource of the area in general.

20. As stated in the Petition, the Illinois EPA determined in its 2002 Source Water Assessment, that the Morton community wells are not vulnerable to inorganic contaminants. The Illinois EPA is not aware of any data that would change that vulnerability assessment. Based on the information discussed above, the Illinois EPA does not believe that this potential source will constitute a significant hazard to the Morton community water supply.

CONCLUSION


21. Pursuant to Section 14.2(c) of the Act, 415 ILCS 5/14.2(c) (2002), the Illinois EPA would recommend that the Board grant a water well setback exception to Petitioner in this matter, for Morton's Wells 7 and 10, provided that the following is required of the Petitioner:

- a) Provide a monitoring program and schedule to monitor the contaminants of concern, TDS, chlorides, pH, and groundwater elevations; and

- b) Provide an affidavit stating that the Petitioner has notified the Village of Morton Public Water Supply of the proposed new potential secondary source.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Joey Logan-Wilkey
Assistant Counsel
Division of Legal Counsel

Dated: May 14, 2010
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
217/782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, Joey Logan-Wilkey, certify that I have served the original and nine copies of the attached **Appearance and Respondent Illinois EPA Response to Petition for Water Well Setback Exception**, by first class mail, upon:

John Theirrault, Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

RECEIVED
CLERK'S OFFICE

MAY 17 2010

STATE OF ILLINOIS
Pollution Control Board


And one copy each to:

Mr. Thomas Davies
1600 S. 4th Avenue
Suite 137
Morton, IL 61350
(309)266-6211

ORIGINAL

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
217/524-8509

via first class United States mail from Springfield, Illinois, on the 14th day of May 2010, with postage fully prepaid.


Joey Logan-Wilkey
Assistant Counsel
Division of Legal Counsel

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