

ILLINOIS POLLUTION CONTROL BOARD
September 9, 1999

KRKH, INC., an Illinois corporation,)
)
 Petitioner,)
)
 v.) PCB 00-25
) (Water Well Setback Exception)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by R.C. Fleml):

On August 16, 1999, petitioner, KRKH, Inc. (KRKH), filed a "Petition for Water Well Setback Exception" relating to replacement of old underground storage tanks (USTs) at a site located at 17 W. 532 Lake Street, Addison, DuPage County, Illinois. On September 2, 1999, KRKH filed a "Supplement to Petition for Water Well Setback Exception," to include additional exhibits in support of its petition. On September 7, 1999, the Illinois Environmental Protection Agency (Agency) filed a response to KRKH's petition for water well setback exception.

Pursuant to Section 14.2(c) of the Environmental Protection Act (Act) (415 ILCS 5/14.2(c) (1998)), on July 19, 1999, KRKH served the following affected well owners located within the 200-foot setback zone: a land trust at Midwest Bank and Trust; Joe and Theresa Scalafini, the alleged beneficiaries of the trust; and Studio 21, the business conducted by the Scalafinis on the affected site. On July 14, 1999, the Agency issued a concurrence letter approving the location of the USTs within the water well setback zone.

In addition to the petition for water well setback exception, KRKH requests a waiver from Section 14.2(b) of the Act, which provides "[i]f 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." 415 ILCS 5/14.2(b) (1998). Pet. at 7-8.

Section 14.2(b) of the Act also provides that "[w]aiver 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." 415 ILCS 5/14.2(b) (1998). Thus, waiver by the affected well owners cannot be granted until 90 days after the date KRKH attempted to obtain consent of the affected well owners.

KRKH alleges that it first attempted to procure consent of the affected well owners on July 19, 1999. Pet. at 7. KRKH argues that waiting until the 120-day period elapses on or about November 16, 1999, will impose a severe financial hardship, since the business on the site is now closed and cannot open lawfully until the requested water well setback exception is granted. Pet. at 7-8.

No response to KRKH's petition or request for waiver of the 120-day time frame has been filed by Midwest Bank and Trust, Joe and Theresa Scalafini, or Studio 21.

KRKH's request to waive the 120-day rule is denied. Section 14.2(b) of the Act creates a right in the owner of the water well to decide, within 90 to 120 days of receipt of the request, whether to waive a petitioner's request for water well setback.

At this time, the Board reserves this docket, but the Board defers any action, including review of the petition or formal acceptance of it for hearing, until after the 120 days elapse. The Board interprets Section 14.2 of

the Act as requiring that the 120 days elapse before the Board hears the petition for water well setback exception. KRKH first attempted to procure consent of the affected well owners on July 19, 1999; consequently, the Board calculates that the 120 days will elapse on November 16, 1999. Therefore, this docket is reserved until November 16, 1999, after which time the Board will review the sufficiency of the petition pursuant to Section 106.602 of the Board's procedural rules (35 Ill. Adm. Code 106.602) and determine whether this matter should be accepted for hearing.

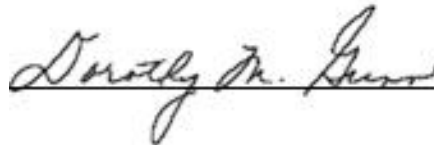
If the affected well owners grant a waiver during the 90 to 120-day time frame, *i.e.*, from October 19, 1999, through November 19, 1999, the petitioner is directed, within 7 days of service of such waiver, to file a motion with the Board withdrawing this water well setback petition.

If by November 16, 1999, the affected well owners do not waive or do not respond to the petitioner's petition for waiver of the water well setback, the petitioner is ordered, by November 29, 1999, to file an updated petition. The updated petition must name the affected well owners as party respondents. While the Board's procedural rules regarding the filing of water well setback petitions do not specifically so require, the Board believes that it is appropriate to join the affected well owners as party respondents pursuant to 35 Ill. Adm. Code 103.121 and 103.141, as persons who have "an interest which the [Board's] order may affect." 35 Ill. Adm. Code 103.121(c) and 103.141; see State Oil Company v. Dr. and Mrs. James Krone and IEPA (May 24, 1999), PCB 90-102, slip op. at 1. The updated petition shall also include any new facts or legal issues that have arisen so that the Board can properly review the sufficiency of the petition and make a determination whether this matter should be accepted for hearing.

IT IS SO ORDERED.

Board Member N.J. Melas abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 9th day of September 1999 by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board