



OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

March 9, 2012

POLLUTION CONTROL BOARD
JOHN THERRIAULT ASSISTANT CLERK
100 W RANDOLPH ST, STE 11-500
CHICAGO, IL 60601

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CLERK'S OFFICE

MAR 14 2012

STATE OF ILLINOIS
Pollution Control Board

Dear JOHN THERRIAULT ASSISTANT CLERK

Your rules Listed below met our codification standards and have been published in Volume 36, Issue 11 of the Illinois Register, dated 3/16/2012.

PROPOSED RULES

Maximum Setback Zones

35 Ill. Adm. Code 618

4015

Point of Contact: Nancy Miller

If you have any questions, you may contact the Administrative Code Division at
(217) 782 - 7017.

COPY

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NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Maximum Setback Zones

2) Code Citation: 35 Ill. Adm. Code 618

| | |
|----------------------------|-------------------------|
| 3) <u>Section Numbers:</u> | <u>Proposed Action:</u> |
| 618.100 | Amend |
| 618.105 | Amend |
| 618.110 | New |
| 618.115 | New |
| 618.200 | Amend |
| 618.205 | Amend |
| 618.210 | New |
| 618.APPENDIX B | New |

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4) Statutory Authority: Implementing Section 14.3 of the Environmental Protection Act (Act) [415 ILCS 5/14.3] and authorized by Sections 27 of the Act [415 ILCS 5/27].

5) A Complete Description of the Subjects and Issues Involved: A more complete description of this proposal may be found in the Board's first-notice opinion and order of March 1, 2012 in docket R11-25.

The Board has previously considered only one other proposal under Section 14.3(d) of the Act, which allows for establishment of "maximum setback zones" to prevent contamination of particularly vulnerable sources of groundwater. The zone restricts land use in the vicinity of the well, providing protection from potential sources or routes of contamination.

Fayette Water Company (FWC) obtains groundwater from six wells pumping a daily average of 494,830 gallons from the Cahokia Aquifer in Fayette County. FWC directly serves 6,510 persons and also served four satellite systems in Fayette, Shelby, and Effingham Counties. On July 12, 2010, the Fayette County Board requested in writing that the Agency propose a maximum setback zone to the Board. Based on various assessments, the Agency concluded that the maximum setback zone was necessary to protect a highly vulnerable source of groundwater. As required by Section 14.3(d) of the Act, the Board concurred that that this expanded protection is justified.

The Board proposes amendments to Part 618 of its public water supplies regulations to establish a maximum setback zone for the six wells owned by FWC. The Board also proposes a limited reorganization of Part 618 in order to accommodate future establishment of additional maximum setback zones.

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- 6) Published studies or reports and sources of underlying data, used to compose this rulemaking: In its original rulemaking proposal, the Illinois Environmental Protection Agency stated that “[n]either a research report nor a published study was used in developing this rule.”
- 7) Will these proposed amendments replace an emergency rule currently in effect? No.
- 8) Do these amendments contain an automatic repeal date? No.
- 9) Do these proposed amendments contain incorporations by reference? No.
- 10) Are there any other proposed amendments pending on this Part? No.
- 11) Statement of Statewide Policy Objectives: These proposed amendments do not create or enlarge a state mandate as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comment on this proposal for a period of 45 days after the date of publication. Comments should refer to docket R11-25 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Interested persons may request copies of the Board's opinion and order in R11-25 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us. For more information, contact the Clerk's Office at 312-814-3629.

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: The proposed rules would affect small businesses, small municipalities, and not-for-profit corporations if they wished to engage in activities that are either prohibited or subject to additional requirements within the delineated FWC setback zone. Those entities would be affected if they sought to place a “new

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potential primary source” of groundwater contamination entirely or partially within the proposed setback zone. These entities may also be affected if they own or operate entirely or partially within the setback zone that constitute “existing activities” of “new activities” under the management and control standards of Parts 615 or 616 of the Board’s regulations.

- B) Reporting, bookkeeping or other procedures required for compliance: The proposed amendments do not contain specific reporting, bookkeeping or other procedures. However, activities located entirely or partially within the setback zone may become subject to the management and control standards of Parts 615 or 616 of the Board’s regulations, which may apply requirements pertaining to inspection, operation, and closure.
- C) Types of Professional skills necessary for compliance: Compliance with the proposed rules may require the services of persons including a registered professional engineer and an attorney.

- 14) Regulatory Agenda in which these amendments were summarized: January 2012

The full text of the Proposed Amendments begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE F: PUBLIC WATER SUPPLIES
CHAPTER I: POLLUTION CONTROL BOARD

PART 618
MAXIMUM SETBACK ZONES

SUBPART A: GENERAL

| | |
|----------------|--|
| Section | |
| 618.100 | Purpose and Applicability |
| 618.105 | Definitions |
| <u>618.110</u> | <u>Regulated Activities, Facilities or Units</u> |
| <u>618.115</u> | <u>Prohibitions</u> |

SUBPART B: ESTABLISHED MAXIMUM SETBACK ZONES MARQUETTE HEIGHTS'
MAXIMUM SETBACK ZONE

| | |
|----------------|--|
| Section | |
| 618.200 | Purpose and Applicability |
| 618.205 | Marquette Heights' Maximum Setback Zone 1,000 Foot Maximum Setback Zone Prohibition |
| <u>618.210</u> | <u>Fayette Water Company's Maximum Setback Zone.</u> |

618.APPENDIX A Boundaries of Marquette Heights' Maximum Setback Zone

618.APPENDIX B Boundaries of Fayette Water Company's Maximum Setback Zone

AUTHORITY: Implementing Section 14.3 and authorized by Section 27 of the Illinois Environmental Protection Act [415 ILCS 5/14.3 and 27].

SOURCE: Adopted in R05-9 at 30 Ill. Reg. 10448, effective May 23, 2006; amended in R11-25 at 36 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL

Section 618.100 Purpose and Applicability

- a) This Part is established in the interest of securing the public health, safety, and welfare; to preserve the quality and quantity of groundwater resources in order to

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assure a safe and adequate water supply for present and future generations; and to preserve groundwater resources currently in use and those aquifers having a potential for future use as a public water supply.

- b) ~~Pursuant to the authority of Section 14.3(d) of the Illinois Environmental Protection Act (Act) [415 ILCS 5/14.3(d)],~~ The provisions of this Part apply to all properties located wholly or partially within a maximum setback zone established under Section 14.3(d) of the Act or this Part.

(Source: Amended in 36 Ill. Reg. _____, effective _____)

Section 618.105 Definitions

- a) ~~Unless specified otherwise, all terms shall have the meanings set forth in the Illinois Environmental Protection Act, (415 ILCS 5/1 et seq.), the Illinois Groundwater Protection Act, (415 ILCS 55/1 et seq.), and 35 Ill. Adm. Code 671. Unless a different meaning of a word or term is clear from the context, the definitions of words or terms in this Part are the same as those used in the Act, the Illinois Groundwater Protection Act [415 ILCS 55], or 35 Ill. Adm. Code 671.~~

- b) For the purposes of this Part, the following definitions apply:

“Act” means the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq., as amended.

“Agency” means the Illinois Environmental Protection Agency.

“Board” means the Illinois Pollution Control Board.

“Facility” means *the buildings and all real property contiguous thereto, and the equipment at a single location used for the conduct of business* [430 ILCS 45/3].

“New Potential Primary Source” means:

a potential primary source which is not in existence or for which construction has not commenced at its location as of January 1, 1988; or

a potential primary source which expands laterally beyond the currently permitted boundary or, if the primary source is not permitted, the boundary in existence as of January 1, 1988; or

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a potential primary source which is part of a facility that undergoes major reconstruction. Such reconstruction shall be deemed to have taken place where the fixed capital cost of the new components constructed within a 2-year period exceed 50% of the fixed capital cost of a comparable entirely new facility [415 ILCS 5/3.345].

“New Potential Route” means:

a potential route which is not in existence or for which construction has not commenced at its location as of January 1, 1988; or

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].

“New Potential Secondary Source” means *a potential secondary source which:*

is not in existence or for which construction has not commenced at its location as of July 1, 1988; or

expands laterally beyond the currently permitted boundary or, if the secondary source is not permitted, the boundary in existence as of July 1, 1988, other than an expansion for handling of livestock waste or for treating domestic wastewaters; or

is part of a facility that undergoes major reconstruction. Such reconstruction shall be deemed to have taken place where the fixed capital cost of the new components constructed within a 2-year period exceed 50% of the fixed capital cost of a comparable entirely new facility [415 ILCS 5/3.355]; but

excludes an agrichemical facility that modifies on-site storage capacity such that the volume of the pesticide storage does not exceed 125% of the available capacity in existence on April 1, 1990, or the volume of fertilizer storage does not exceed 150% of the available capacity in existence on April 1, 1990; provided that a written endorsement for an agrichemical facility permit is in effect under Section 39.4 of the Act and the maximum feasible setback is maintained. This on-site storage capacity includes mini-bulk pesticides, package agrichemical storage areas, liquid or dry

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fertilizers, and liquid or dry pesticides [415 ILCS 5/14.2(g)(4)].

“Potential Primary Source” means *any unit at a facility or site not currently subject to a removal or remedial action which:*

is utilized for the treatment, storage, or disposal of any hazardous or special waste not generated at the site; or

is utilized for the disposal of municipal waste not generated at the site, other than landscape waste and construction and demolition debris; or

is utilized for the landfilling, land treating, surface impounding or piling of any hazardous or special waste that is generated on the site or at other sites owned, controlled or operated by the same person; or

stores or accumulates at any time more than 75,000 pounds above ground, or more than 7,500 pounds below ground, of any hazardous substances [415 ILCS 5/3.345].

“Potential route” means *abandoned and improperly plugged wells of all kinds, drainage wells, all injection wells, including closed loop heat pump wells, and any excavation for the discovery, development or production of stone, sand or gravel [415 ILCS 5/3.350].*

“Potential secondary source” means *any unit at a facility or a site not currently subject to a removal or remedial action, other than a potential primary source, which:*

is utilized for the landfilling, land treating, or surface impounding of waste that is generated on the site or at other sites owned, controlled or operated by the same person, other than livestock and landscape waste, and construction and demolition debris; or

stores or accumulates at any time more than 25,000 but not more than 75,000 pounds above ground, or more than 2,500 but not more than 7,500 pounds below ground, of any hazardous substances; or

stores or accumulates at any time more than 25,000 gallons above ground, or more than 500 gallons below ground, of petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed

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or designated as a hazardous substance; or

stores or accumulates pesticides, fertilizers, or road oils for purposes of commercial application or for distribution to retail sales outlets; or

stores or accumulates at any time more than 50,000 pounds of any de-icing agent; or

is utilized for handling livestock waste or for treating domestic wastewaters other than private sewage disposal systems as defined in the Private Sewage Disposal Licensing Act [415 ILCS 5/3.355].

“Setback zone” means a geographic area, designated pursuant to the Act, containing a potable water supply well or a potential source or potential route, having a continuous boundary, and within which certain prohibitions or regulations are applicable in order to protect groundwaters [415 ILCS 5/3.450].

“Site” means any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation or control by the Act or regulations thereunder [415 ILCS 5/3.460].

“Unit” means any device, mechanism, equipment, or area (exclusive of land utilized only for agricultural production). This term includes secondary containment structures and their contents at agrichemical facilities. [415 ILCS 5/3.515]

“Unit boundary” means a line at the land’s surface circumscribing the area on which, above which, or below which waste, pesticides, fertilizers, road oils or de-icing agents will be placed during the active life of the facility. The space taken up by any liner, dike or other barrier designed to contain waste, pesticides, fertilizer, road oils, or de-icing agents falls within the unit boundary.

(Source: Amended in 36 Ill. Reg. _____, effective _____)

Section 618.110 Regulated Activities, Facilities or Units

All new or existing activities, facilities or units located wholly or partially in any maximum setback zone created by this Part will be subject to the groundwater rules set forth in Section 14.4 of the Act, and any Board regulations promulgated pursuant to Section 14.4 of the Act, including, but not limited to, Parts 615 and 616 of this Title.

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(Source: Added in 36 Ill. Reg. _____, effective _____)

Section 618.115 Prohibitions

New potential primary sources of groundwater contamination are prohibited from locating wholly or partially within any maximum setback zone established under Section 14.3 of the Act or this Part.

(Source: Added in 36 Ill. Reg. _____, effective _____)

SUBPART B: ESTABLISHED MAXIMUM SETBACK ZONES ~~MARQUETTE HEIGHTS'~~
~~MAXIMUM SETBACK ZONE~~

Section 618.200 Purpose and ~~Applicability~~

- a) This Subpart prescribes maximum setback zones for individual community water supply wells ~~prohibitions and the applicable technology control regulations that apply under 35 Ill. Adm. Code 615 and 616~~ in the interest of securing the public health, safety, and welfare; to preserve the quality and quantity of groundwater resources in order to assure a safe and adequate water supply for present and future generations; and to preserve groundwater resources currently in use and those aquifers having a potential for future use as a public water supply.

- b) ~~The provisions of this Subpart apply to all properties located wholly or partially within the maximum setback zone boundaries of Marquette Heights, as delineated in Appendix A of this Part:~~
 - 1) ~~That are new potential primary sources of groundwater contamination pursuant to Section 14.3(d) of the Act; or~~

 - 2) ~~That are existing or new activities regulated under 35 Ill. Adm. Code 615 or 616, excluding agricultural facilities that affirmatively opt out of 35 Ill. Adm. Code 615 or 616, which are regulated instead under 8 Ill. Adm. Code 257 or 77 Ill. Adm. Code 830.~~

(Source: Amended in 36 Ill. Reg. _____, effective _____)

Section 618.205 Marquette Heights' Maximum Setback Zone ~~1,000 Foot Maximum Setback Zone Prohibition~~

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~~New potential primary sources of groundwater contamination are prohibited from locating wholly or partially within the The Marquette Heights' maximum setback zone is established as boundaries delineated in Appendix A of this Part.~~

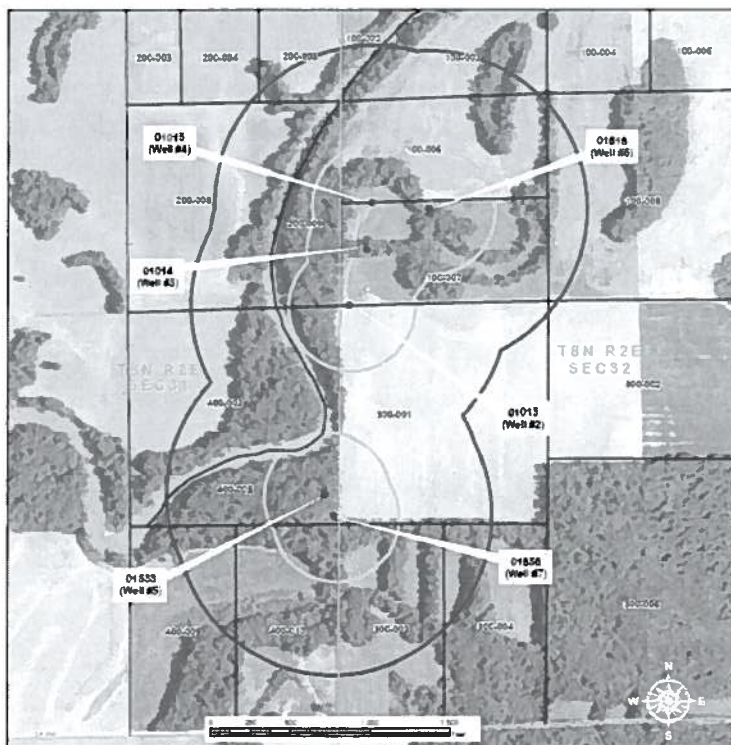
(Source: Amended in 36 Ill. Reg. _____, effective _____)

Section 618.210 Fayette Water Company's Maximum Setback Zone

The Fayette Water Company's maximum setback zone is established as delineated in Appendix B of this Part.

(Source: Added in 36 Ill. Reg. _____, effective _____)

Section 618.APPENDIX B: Boundaries of Fayette Water Company's Maximum Setback Zone



**PROPOSED MAXIMUM SETBACK ZONE
FAYETTE WATER COMPANY (IL0510010)
T8N R2E 3TH PRINCIPAL MERIDIAN**

| SECTION 31 | |
|---------------------|------------------|
| Partially Contained | Wholly Contained |
| 200 - 004 | 400 - 008 |
| 200 - 005 | |
| 200 - 006 | |
| 400 - 003 | |
| 400 - 006 | |
| 400 - 008 | |
| 400 - 009 | |
| 400 - 010 | |

| SECTION 32 | |
|---------------------|------------------|
| Partially Contained | Wholly Contained |
| 100 - 002 | 100 - 007 |
| 100 - 003 | |
| 100 - 006 | |
| 100 - 008 | |
| 300 - 001 | |
| 300 - 002 | |
| 300 - 003 | |
| 300 - 004 | |

- Legend**
- Community Water Supply Wells
 - CWS Wells Minimum Setback Zone
 - Proposed Maximum Setback Zone
 - Fayette County PINS
 - Section Boundaries

SOURCE INFORMATION
Fayette County PINS obtained from the Fayette County Assessor's Office. Aerial photography obtained from Microsoft's Virtual Earth. Minimum and maximum setback zones, and CWS wells maintained by, and map compiled and created by the Illinois EPA, Division of Water Supplies, Groundwater Section.

(Source: Added in 36 Ill. Reg. _____, effective _____)