

ILLINOIS POLLUTION CONTROL BOARD
January 18, 2001

GILBERTS CITGO L.L.C, an Illinois corporation,)
)
)
 Petitioner,)
)
 v.) PCB 01-50
) (Water Well Setback Exception)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY, WHEELING)
 TRUST & SAVINGS BANK a/k/a COLE)
 TAYLOR BANK, successor trustee, as)
 trustee under Trust No. 73-314 and JOHN)
 CAPORASO, as beneficiary of Trust No.)
 73-314,)
)
 Respondents.)

ORDER OF THE BOARD (by C.A. Manning):

On September 8, 2000, Gilberts Citgo L.L.C. (Citgo), filed a petition for a water well setback exception relating to installation of underground storage tanks (USTs) at a site located at the southeast corner of Route 72 and Center Road (the site) in the Village of Gilberts, Kane County, Illinois. Citgo requests a water well setback exception (WWSE) pursuant to Section 14.2(a) of the Environmental Protection Act (Act) (415 ILCS 5/14.2(a) 1998) and 35 Ill. Adm. Code 106, Subpart F. Citgo seeks to develop and operate a Citgo gas station and convenience store at the site.

Citgo purchased the site in April of 2000. Tr. at 19.¹ The site was previously undeveloped and Citgo was aware of the existence of the well prior to purchasing the site. *Id.* The site plan contains a convenience store, as well as pumps, lines, and tanks for the sale of regular and premium gasoline and diesel fuel. The development plans of Citgo would place the USTs approximately 112 feet from an off-site well owned by John Caporaso.

For the reasons expressed below, the Board does not rule on the WWSE at this time, but grants Citgo 60 days to demonstrate that an exception will not cause a significant hazard.

¹ The petition and amended petition assert Citgo purchased the property in August of 1999. Pet. at 1; Am. Pet. at 1.

PROCEDURAL HISTORY

Once Citgo determined that a well was located within 200 feet of the proposed USTs, Citgo attempted to obtain the consent of Marcia Caporaso to locate the USTs at a distance less than 200 feet from her well. The first attempt to procure the consent of the well owner was made by Diana S. Larson, by phone conversation on March 10, 2000. A letter was sent to Marcia Caporaso on March 15, 2000, offering to relocate the well to a different location on the Caporasos' property that would be 200 feet from the proposed tanks at no expense to the Caporasos. The offer was rejected.² A fax waiver request was then sent to the Caporasos on March 21, 2000. The consent was not given. A second attempt to secure a waiver was made on April 25, 2000, offering to pay all costs to tap and hook up the Caporasos' building to the Village of Gilberts' water supply when it becomes available next year. No consent was given.

As earlier stated, on September 8, 2000, Citgo filed its WWSE request with the Board. On October 17, 2000, the Illinois Environmental Protection Agency (Agency) filed its response in support of granting Citgo's request, indicating Citgo adequately presented its case. See Resp. at 5-7.

In its original petition, Citgo did not name the well owner as a respondent, but identified the well owner to be Marcia Caporaso. On September 21, 2000, the Board issued an order mandating that she be named a respondent to the action. See 35 Ill. Adm. Code 106.300(b) (effective January 1, 2001). On September 29, 2000, Citgo filed an amended petition naming Marcia Caporaso.

On October 19, 2000, the parties participated in a status conference with Hearing Officer Brad Halloran. At that time, it was determined that the record owner of the property was not Marcia Caporaso. Rather, the owner was a land trust, with John Caporaso as the beneficiary. Marcia Caporaso is John Caporaso's wife and also an attorney who represents John Caporaso. As a result of the ownership issue, Citgo filed its second amended petition on October 23, 2000. The petition named as respondents Wheeling Trust and Savings Bank a/k/a Cole Taylor Bank, successor trustee under Trust No. 73-314 and John Caporaso as beneficiary of Trust No. 73-314, as reflected in the caption of this opinion and order.

On November 22, 2000, a public hearing was held in this matter. Attorney Timothy Dwyer appeared on behalf of Citgo. Attorney Diana Larson, design builder Michael Maude, Jr., and part owner of the site, Edward Newby, testified on behalf of Citgo. Attorney Stephen Ewart appeared on behalf of the Agency. Lynn Dunaway testified on behalf of the Agency. There were no representatives present on behalf of respondent Wheeling Trust & Savings Bank or respondent John Caporaso. No members of the public attended the hearing.

² According to Diana Larson, an attorney who initially represented Gilberts in the development process, the offer was rejected by the Caporasos because Marcia Caporaso requested that the Village of Gilberts guarantee that there would never be a problem in perpetuity with respect to the location of the well and the USTs. Tr. at 16.

STATUTORY AND REGULATORY FRAMEWORK

Section 14.2 of the Act establishes provisions designed to protect groundwater from possible contamination. Among these provisions is the establishment of a setback zone around a potable water supply well. 415 ILCS 5/14.2(a) (1998). Within the setback zone, no “new potential source” nor “new potential route of groundwater contamination” may be sited, unless this Board has granted an exception. 415 ILCS 5/14.2(c) (1998). USTs are potential sources of groundwater contamination. 415 ILCS 5/3.60 (1998).

The Act also requires that an owner seeking an exception to a potable water supply well other than a community water supply well file a petition with the Board and the Agency, and describe the circumstances under which the owner sought a written request for a waiver from the water well’s owner and the Agency. 415 ILCS 5/14.2(c) (1998).

Proceedings in this matter were conducted pursuant to the Board’s former water well setback exception procedures codified at 35 Ill. Adm. Code 106.601 *et seq.* These have been superseded as of January 1, 2001, by rules codified at 35 Ill. Adm. Code 106.300 *et. seq.*

The Board must grant a requested exception when the Board finds that adequate proof has been presented.

[T]hat compliance with the setback requirements . . . 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 . . . will not constitute a significant hazard to the potable water supply well. 415 ILCS 5/14.2(c)(1998); see also 35 Ill. Adm. Code 106.310 (effective January 1, 2001).

MERITS OF EXCEPTION REQUEST

Each of the four issues that the Board must consider in its review of a water well setback request is discussed below.

Maximum Feasible Alternative Setback

Citgo provided site layouts, including the tanker truck access plan. Site design and UST placement is based on IDOT criteria for safety during fuel delivery by large tanker trucks. Citgo contends, and the Agency does not disagree, that the site design incorporates the maximum feasible alternative setback. Tr. at 58. The Board has reviewed the evidence regarding the maximum feasible alternative setback. We find that Citgo has met its burden on the issue.

Significant Hazard to the Well on the Adjacent Property

Citgo asserts that it has taken all the steps within its control to minimize the potential of any type of leak from the tanks or lines as potential sources of contamination. Am. Pet. at 8. Further, Citgo states that the well logs it received from the Illinois State Water Survey indicate that most of the wells in the area of Citgo's property are deep wells which are located in soil formation of clay to a depth of at least 20 feet. *Id.* While the well logs submitted by Citgo did not include a log for the Caporasos' well, the petitioner's attempts to obtain any information from the well owner or conduct a well inspection were not successful. Pet. Br. at 8. Citgo maintains that the installation of tanks in clay formation, which retains moisture, and the use of best available technology controls minimizes the threat of contamination.

Dunaway testified about the geologic logs from the area near the proposed site. Tr. at 58. A geologic log for the Caporasos' well was not among the logs available from the Illinois State Water Survey. However, based on the review of the available logs, Dunaway determined that the geologic conditions at the site consisted of bedrock surface overlain by unconsolidated glacial materials ranging from 150 to 200 feet in thickness. Tr. 59-61. Dunaway stated that clay is the most common glacial material noted in the logs, and because clay has a low permeability contaminants that may enter the ground tend not to move very far nor do they move rapidly. *Id.* Dunaway further testified that there is glacial material in this area with sand and gravel layers of adequate thickness which contains Class I groundwater. Tr. at 60. These sands and gravel layers are fairly common and are occasionally used as a source of water in the area. However, the layers do not appear to be laterally extensive.

Review of the geologic logs revealed that the great majority of the wells in the Village of Gilberts are utilizing the bedrock formation as a source of water. Tr. at 60. Dunaway testified the wells are cased through the glacial material and have a significant thickness of clay between the land surface and the bedrock. *Id.* If the Caporasos' well utilizes the bedrock and is properly constructed and maintained, Dunaway determined that the site would not pose a significant hazard to a well utilizing the bedrock formation. *Id.*

However, Dunaway noted the possibility that the Caporasos' well was utilizing one of the localized sands as its source of water, and the same sands would exist on the site. Tr. at 61. If this were the case, the site could pose a significant hazard to the well. *Id.* Dunaway noted that Citgo has committed to sample and analyze the Caporasos' well water annually for petroleum contaminants to insure that it does not become contaminated. *Id.* Dunaway testified that annual groundwater monitoring will provide sufficient protection to prevent a significant health risk to the water users and would keep the site from being a significant health risk. *Id.*

The Board agrees with the Agency that a significant hazard might be present if the Caporasos's well draws water from a localized sand layer and the same sand layer exists on the site. In this regard, the Board notes that the petitioner has not provided a geologic log of the Caporasos' well to ascertain whether the well is drawing water from the protected bedrock aquifer or from any localized sand layer. While the geologic logs submitted by Citgo indicate

that a large number of wells in the vicinity of Citgo's site draw water from the bedrock aquifer, the logs do not provide assurance that the proposed placement of USTs would not pose threat of contamination to the Caporasos' well, especially considering that the occurrence of sand and gravel layers of adequate thickness to contain Class I groundwater are fairly common in the area.

While the petitioner's commitment to monitor the Caporasos' well provides a measure of safety for the well water users, the Board notes that such monitoring does not protect the well from contamination since any detection of indicator contaminants in the Caporasos' well would mean that the well is already contaminated. Further, since the petitioner proposes to monitor the Caporasos' well on an annual basis, if contaminants reach the well within a short period time after a monitoring event, the water well users would be exposed to contaminated water for a significant period of time. In this regard, Citgo has not offered to perform any groundwater monitoring on its property to ensure that any potential contamination would be detected before it moves beyond the property line. Further, Citgo has not provided any site hydrogeologic information such as direction and rate of groundwater flow or site geologic characterization to support its claim that the proposed activity does not pose a significant threat to the Caporasos' well. In light of this, the Board finds that, at this time, the petitioner has not provided sufficient proof to demonstrate that the proposed site will not constitute a significant hazard to the Caporasos' well.

Arbitrary and Unreasonable Hardship

A showing of arbitrary and unreasonable hardship is a necessary element to the Board's grant of water well exceptions. 415 ILCS 5/14(c) (1998).

The Board cannot address the issue of arbitrary or unreasonable hardship given the insufficient proof on the significant hazard issue, discussed above.

Best Available Technology Controls

Citgo has demonstrated that it will use what the Agency agrees are the best available technology controls for its USTs. Pet. at 2; Exhs. 2, 5-8. Citgo's UST systems will be equipped to use the best available technology controls as follows: fiberglass underground storage tanks; double wall direct burial product pumping, containment sumps; containment manholes to collect any excess fuel in the hoses of the tanker at the time of filling; positive overfill prevention valves; line leak detection and automatic tank gauging system; non-discriminating liquid sensors in the submersible pump sumps for detecting any liquid that may accumulate in the containment sump; and a leak trigger alarm system. Accordingly, the Board finds Citgo has met its burden on this issue.

CONCLUSION

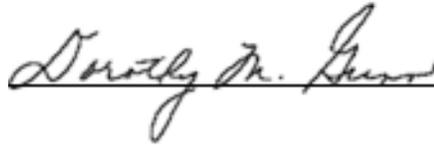
The Board concludes that Citgo has not proven, at this time, the necessary elements for the granting of a water well setback exception. However, the Board does not deny the WWSE

at this point. Rather, the Board grants Citgo 60 days from the date of this order, that is on or before March 19, 2001, to demonstrate that the WWSE will not cause a significant hazard, and that it will suffer an arbitrary or unreasonable hardship if the WWSE is denied. If Citgo requires more than 60 days, Citgo must request an extension from the Board prior to March 19, 2001. If Citgo does not provide the requested information or request an extension by March 19, 2001, the WWSE will be denied and the docket closed.

IT IS SO ORDERED.

Board Members G.T. Girard and M. McFawn dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 18th day of January 2001 by a vote of 5-2.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board