

ILLINOIS POLLUTION CONTROL BOARD
December 2, 2004

IN THE MATTER OF:)
)
SETBACK ZONE FOR CITY OF) R05-9
MARQUETTE HEIGHTS COMMUNITY) (Rulemaking - Public Water Supply)
WATER SUPPLY, NEW 35 ILL. ADM.)
CODE 618)

ORDER OF THE BOARD (by A.S. Moore):

On November 5, 2004, the Board received a rulemaking proposal from the Illinois Environmental Protection Agency (Agency) to establish 1,000-foot setback zone protection for the community water supply (CWS) wells of the City of Marquette Heights, in Tazewell County. The proposal is the first of its kind under Section 14.3(d) of the Environmental Protection Act (Act) (415 ILCS 5/14.3(d) (2002)), which allows for the establishment of “maximum setback zones” to prevent contamination of particularly vulnerable groundwater sources used by CWS. The proposed public water supply rules would create a new Part 618 of Title 35 of the Illinois Administrative Code. Today the Board accepts the Agency’s proposal for hearing.¹

The Agency states in its proposal that in March of this year, it received a letter from the Mayor of Marquette Heights. According to the Agency, enclosed with the Mayor’s letter was a City resolution requesting the Agency to propose regulations that would “increase the setback zone” of the Marquette Heights CWS. Statement at 1.

By way of background, Section 14.2 of the Act (415 ILCS 5/14.2 (2002)) establishes a “*minimum* setback zone” of 200 or 400 feet around each CWS well in Illinois. See 415 ILCS 5/14.2(a), (d) (2002). The Act defines a CWS as a “public water supply which serves or is intended to serve at least 15 service connections used by residents or regularly serves at least 25 residents.” 415 ILCS 5/3.145 (2002). Absent a setback exception issued by the Board, various defined “potential primary sources,” “potential secondary sources,” or “potential routes” of contamination cannot be placed within the minimum setback zone of a CWS well. See 415 ILCS 5/14.2(a), (c) (2002).

Section 14.3 of the Act (415 ILCS 5/14.3 (2002)), which is at issue today, allows for *additional* protection beyond the minimum setback zone. Under specified circumstances, Section 14.3 authorizes either the Board, or the county or municipality served by a CWS well, to establish a “*maximum* setback zone” of up to 1,000 feet from the CWS wellhead. Subsection (d) of Section 14.3 provides that the Board may establish a maximum setback zone after receiving an Agency proposal. Specifically, Section 14.3(d) reads in part:

[U]pon written notice to the county or municipality, the Agency may propose to the Board a regulation establishing a maximum setback zone for any well subject

¹ The Board cites the proposal’s Statement of Reasons as “Statement at _.”

to this Section. Such proposal shall be based upon all reasonably available hydrogeologic information, include the justification for expanding the zone of wellhead protection, and specify the boundaries of such zone, no portion of which boundaries shall be in excess of 1,000 feet from the wellhead. Such justification may include the need to protect a sole source of public water supply or a highly vulnerable source of groundwater, or an Agency finding that the presence of potential primary or potential secondary sources or potential routes represents a significant hazard to the public health or the environment. The Agency may proceed with the filing of such a proposal unless the county or municipality, within 30 days of the receipt of the written notice, files a written request for a conference with the Agency. Upon receipt of such a request, the Agency shall schedule a conference to be held within 90 days thereafter. At the conference, the Agency shall inform the county or municipality regarding the proposal. Within 30 days after the conference, the affected unit of local government may provide written notice to the Agency of its intent to establish a maximum setback zone in lieu of the Agency acting on a proposal. Upon receipt of such a notice of intent, the Agency may not file a proposal with the Board for a period of 6 months. 415 ILCS 5/14.3(d) (2002).

The Agency states that its proposal is needed to protect the groundwater supplied to Marquette Heights residents as drinking water. Statement at 1, 5. According to the proposal, Marquette Heights has CWS wells located in North Pekin, Tazewell County, with an estimated average daily pumpage from the groundwater source of 240,000 gallons per day, supplying approximately 3,200 persons directly. *Id.* at 4-5. Based on various assessments, including groundwater flow and recharge area modeling, the Agency concluded that the Marquette Heights CWS wells are not adequately protected by the minimum setback zones, and that the groundwater source is “highly vulnerable.” *Id.* at 5-6. The Agency further notes that it issued an “advisory of groundwater contamination hazard” for North Pekin and Marquette Heights in July 1990 because of potential sources of groundwater contamination that represented a “significant hazard to public health and the environment.” *Id.* The Agency maintains therefore that expanding the zone of wellhead protection is justified as Section 14.3(d) of the Act requires. *Id.* at 7.

Additionally, the Agency states that it has met the notice requirements of Section 14.3(d). According to the Agency, it provided notice of the rulemaking proposal by certified mail to the City of Marquette Heights, the Village of Pekin, and the Tazewell County Zoning Office in June 2004. Statement at 7. The proposal notes that the Agency received no comments within the statutory 30-day period from any of these governmental entities. *Id.* at 8.

The proposal further provides that at separate meetings held in July 2004, the following organizations concluded that they had no objections to the Agency proceeding with the proposal: (1) the Central Regional Priority Groundwater Protection Planning Committee, established under Section 17.2 of the Act (415 ILCS 5/17.2 (2002)) as one of four priority groundwater protection

planning regions in the State;² and (2) the Interagency Coordinating Committee on Groundwater and the Groundwater Advisory Council, both established under the Groundwater Protection Act (415 ILCS 55 (2002)).³ Statement at 4, 7.

As proposed by the Agency, the new Part 618 of the Board's public water supply rules would have two subparts. In Subpart A of Part 618, the Agency proposes general provisions for "maximum setback zones," including definitions. Statement at 8. In Subpart B of Part 618, the Agency proposes rules specific to the Marquette Heights CWS wells, including an appendix which, according to the Agency, delineates the irregularly-shaped boundaries of the proposed 1,000-foot maximum setback zone. *Id.* at 5, 9. Proposed Subpart B includes provisions that the Agency states are designed (1) to prohibit "new potential primary sources" of groundwater contamination from locating within the expanded setback, and (2) to make the Board's "technical standards" of 35 Ill. Adm. Code 615 and 616 applicable to certain new and existing activities located wholly or partially within the expanded setback. *Id.* at 2-3, 8-9, 11.⁴

The Board finds that the Agency's rulemaking proposal satisfies the content requirements of 35 Ill. Adm. Code 102.202. The Board accepts the proposal for hearing. Section 14.3(d) of the Act states in part:

Rulemaking proceedings initiated by the Agency under this subsection shall be conducted by the Board pursuant to Title VII of this Act, except that subsection (b) of Section 27 shall not apply. 415 ILCS 5/14.3(d) (2002).

Section 27(b) of the Act requires the Board to request that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study (EcIS) of proposed substantive rules, and to make DCEO's response available at least 20 days before holding a public hearing on the proposal's economic impact. *See* 415 ILCS 5/27(b) (2002). In accordance

² The central region consists of Mason, Peoria, Tazewell, and Woodford Counties. Each of the four regions has a committee comprised of representatives of counties, municipalities, public water supplies, and members of the general public, including persons with business, environmental, and agricultural interests. Statement at 4.

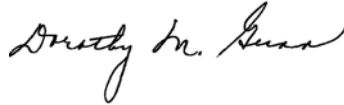
³ The Interagency Coordinating Committee on Groundwater is chaired by the Agency and comprised of the Illinois Department of Public Health, the Illinois Department of Natural Resources, the Illinois Department of Agriculture, the Illinois State Fire Marshal, the Department of Commerce and Economic Opportunity, and the Illinois Emergency Management Agency. Statement at 7. The Groundwater Advisory Council is comprised of environmental, business, public water supply, county and municipal government, regional planning, and water well driller interest group representatives. The proposal states that these two organizations (1) work jointly, with the Agency as liason between them, and (2) work with the four regional priority groundwater planning committees described in the preceding footnote. *Id.*

⁴ The Agency's proposed rule language, as well as the Agency's Statement of Reasons, is available on the Board's Web site at www.ipcb.state.il.us.

with Section 14.3(d) of the Act, the Board will not request DCEO to conduct an EcIS on the Agency's proposal. With that exception, the Board directs the hearing officer assigned to proceed expeditiously under the Title VII rulemaking provisions of the Act (415 ILCS 5/27, 28 (2002)) and the Board's procedural rules (35 Ill. Adm. Code 102).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 2, 2004, by a vote of 5-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board