

ILLINOIS POLLUTION CONTROL BOARD
October 16, 1992

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM. CODE) R92-20
615 AND 616 (GROUNDWATER); EXCEPTIONS) (Rulemaking)
FOR PESTICIDE AND FERTILIZER FACILITIES)

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

On September 15, 1992, Governor Edgar signed Senate Bill 1750 (Public Act 87-1108) into law. This act amends the Illinois Environmental Protection Act to provide an alternative groundwater protection program for certain agrichemical facilities currently subject to 35 Ill. Adm. Code 615 and 616. The purpose of the instant rulemaking is to conform the Part 615 and 616 regulations with P.A. 87-1108.

The current Part 615 and 616 rules regulate new and existing agrichemical facilities that are located within setback zones of potable water wells, with an effective compliance date of January 1, 1993. Under the provisions of PA 87-1108 facilities may elect to opt out of the Part 615 and 616 program and instead participate in an alternative groundwater protection program to be administered by the Illinois Department of Agriculture.

The Illinois Environmental Protection Agency (Agency) has elected not to act as proponent in this matter, and so notified the Board of this intent by letter to the Board dated October 14, 1992¹. The Agency does, however, by the same letter recommend language that it believes would provide the necessary Part 615 and 616 amendments. No other proponent has stepped forward.

Because the January 1, 1993 compliance date is now imminent, there is need for this matter to proceed expeditiously. Accordingly, the Board today offers the Agency's recommendation for first notice, but without making substantive evaluation of the merits of the recommendation.

Pursuant to requirements of the Illinois Environmental Protection Act, the Board will conduct two state-wide hearings on this matter. The hearing officer is hereby directed to schedule

¹ The Board today enters this letter into the record as Exhibit 1.

these hearings at the earliest practicable date consistent with requirements for public notice.

Written public comment also is invited. The public comment period will remain open to a date following the second of the hearings, the date to be specified by the hearing officer.

Finally, the Board notes that the rule-promulgation steps under the Illinois Administrative Procedure Act do not provide for the possibility that today's proposed amendments can be effective by January 1, 1993. Accordingly, interested persons are requested to consider what action, if any, might be appropriate to bridge the period between January 1, 1993 and some subsequent effective date. Among vehicles which have conceivable utility are emergency rulemaking, variance (single or group; regular or provisional), or a stay of effectiveness of the January 1, 1993 date.

ORDER

The Board hereby offers for first notice the following amendments to 35 Ill. Adm. Code, Subtitle F: Public Water Supplies, Chapter I, Pollution Control Board, Parts 615 and 616. The Clerk of the Board is directed to file these proposed rules with the Secretary of State.

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

PART 615

EXISTING ACTIVITIES IN A SETBACK ZONE OR REGULATED RECHARGE AREA

SUBPART A: GENERAL

Section 615.105 General Exceptions

- a) This Part does not apply to any facility or unit, or to the owner or operator of any facility or unit:
- 1) For which the owner or operator obtains certification of minimal hazard pursuant to Section 14.5 of the Act; or
 - 2) For which alternate requirements are imposed in an adjusted standard proceeding or as part of a site-specific rulemaking, pursuant to Title VII of the Act; or
 - 3) For which alternate requirements are imposed in a regulated recharge area proceeding pursuant to Section 17.4 of the Act; or

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- 4) That is LOCATED ON THE SAME SITE AS A NON-COMMUNITY WATER SYSTEM WELL AND FOR WHICH THE OWNER IS THE SAME FOR BOTH THE facility or unit AND THE WELL. (Section 14.4(b) of the Act); or
- 5) That is located WITHIN A REGULATED RECHARGE AREA AS DELINEATED in 35 Ill. Adm. Code 617, PROVIDED THAT:
 - A) THE BOUNDARY OF THE LATERAL AREA OF INFLUENCE OF A COMMUNITY WATER SUPPLY WELL LOCATED WITHIN THE REGULATED RECHARGE AREA does not INCLUDE SUCH facility or unit THEREIN;
 - B) THE DISTANCE FROM THE WELLHEAD OF THE COMMUNITY WATER SUPPLY TO THE facility or unit EXCEEDS 2500 FEET; AND
 - C) THE COMMUNITY WATER SUPPLY WELL WAS not IN EXISTENCE PRIOR TO JANUARY 1, 1988.

(Section 14.4(b) of the Act).

- 6) For which the owner or operator of the facility for storage and related handling of pesticides or fertilizers for the purpose of commercial application or at a central location for the purpose of distribution to retail sales outlets that has filed a written notice of intent or a certification of intent pursuant to Section 14.6 of the Act WITH THE DEPARTMENT OF AGRICULTURE BY JANUARY 1, 1993, OR WITHIN 6 MONTHS AFTER THE DATE ON WHICH A MAXIMUM SETBACK ZONE IS ESTABLISHED OR A REGULATED RECHARGE AREA REGULATION IS ADOPTED THAT AFFECTS SUCH A FACILITY (Section 14.6(a) of the Act). This exception shall not apply to those facilities that are not in compliance with the program requirements of subsections 14.6(b) and 14.6(c) of the Act.
- b) Nothing in this Section shall limit the authority of the Board to impose requirements on any facility or unit within any portion of any setback zone or regulated recharge area pursuant to the Act.

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

PART 616

NEW ACTIVITIES IN A SETBACK ZONE OR REGULATED RECHARGE AREA

SUBPART A: GENERAL

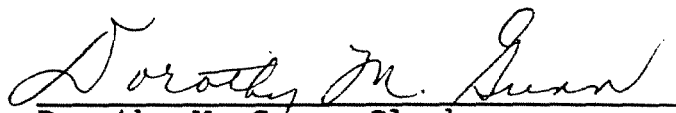
Section 616.105 General Exceptions

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- a) This Part does not apply to any facility or unit, or to the owner or operator of any facility or unit, for which:
- 1) The owner or operator obtains certification of minimal hazard pursuant to Section 14.5 of the Act; or
 - 2) Alternate requirements are imposed in an adjusted standard proceeding or in a site-specific rulemaking, pursuant to Title VII of the Act; or
 - 3) Alternate requirements are imposed in a regulated recharge area proceeding pursuant to Section 17.4 of the Act.
 - 4) The owner or operator of the facility for storage and related handling of pesticides or fertilizers for the purpose of commercial application or at a central location for the purpose of distribution to retail sales outlets that has filed a written notice of intent or a certification of intent pursuant to Section 14.6 of the Act WITH THE DEPARTMENT OF AGRICULTURE BY JANUARY 1, 1993, OR WITHIN 6 MONTHS AFTER THE DATE ON WHICH A MAXIMUM SETBACK ZONE IS ESTABLISHED OR A REGULATED RECHARGE AREA REGULATION IS ADOPTED THAT AFFECTS SUCH A FACILITY (Section 14.6(a) of the Act). This exception shall not apply to those facilities that are not in compliance with the program requirements of subsections 14.6(b) and 14.6(c) of the Act.
- b) Nothing in this Section shall limit the authority of the Board to impose requirements on any facility or unit within any portion of any setback zone or regulated recharge area in any adjusted standard proceeding, site-specific rulemaking or a regulatory proceeding establishing the regulated recharge area.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 16th day of October, 1992, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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