

ILLINOIS POLLUTION CONTROL BOARD  
December 17, 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.                      Second Notice.

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

Public Act 87-1108 (Senate Bill 1750) amends the Illinois Environmental Protection Act to provide an alternative groundwater protection program for certain agrichemical facilities that are currently subject to the Board regulations found at 35 Ill. Adm. Code 615 and 616. The 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 purpose of the instant rulemaking is to conform the Part 615 and 616 regulations with PA 87-1108.

By today's action, the Board sends the proposed amendments to second notice. Additionally, the Board stays the applicability of Parts 615 and 616 to affected facilities pending completion of the instant rulemaking, as specified in the order below.

PROCEDURAL HISTORY

On October 16, 1992 the Board proposed language for first notice as recommended by the Illinois Environmental Protection Agency (Agency) in Exhibit 1. First notice publication occurred at 16 Ill. Reg. 16465 and 16473, October 30, 1992. Due to the imminence of the January 1, 1993 compliance date and the need for the matter to proceed expeditiously, the Board offered the Agency's recommendation for first notice without making substantive evaluation of the merits of the recommendation. Rather, the Board set hearings on an expedited schedule.

Hearings were held on December 8, 1992 in Bloomington, Illinois, and on December 10, 1992 in DeKalb, Illinois.

0138-0215

MERITS

Hearing testimony was presented by the Illinois Fertilizer and Chemical Association (IFCA), Growmark<sup>1</sup>, and the Illinois Environmental Protection Agency (Agency). Each recommends that the amendments be adopted. (Tr. at 5-8; Tr.2 at 7<sup>2</sup>.) In addition, comments were filed during the first notice comment period by Illinois Farm Bureau (Farm Bureau), recommending adoption. (PC #5.) The McHenry County Defenders, Citizens for a Better Environment, and the Illinois Chapter of the Sierra Club collectively filed a comment stating that they believe that the proposed regulation is consistent with the public act. (PC #4.)

IFCA and Growmark expect that adoption of the amendments would have an overall positive economic impact on the affected facilities. (Tr. at 7, 11.) Any economic benefit of these rules may not be known until after the alternate program rules are developed. (Tr. at 7.)

The Agency at the DeKalb hearing observed that PA 87-1108 requires that a certain class of affected facilities<sup>3</sup> provide written notice by January 1, 1993 of their intent to participate in the Department of Agriculture program, but that a second class of affected facilities<sup>4</sup> may elect the Department of Agriculture Program by submitting a certification of intent at the time of their license or license renewal application. This distinction was not recognized in the amendments as crafted for first notice. The Agency recommends, and the Board accepts, that the first notice language be modified to recognize this distinction, as follows:

For which the owner or operator of the facility for storage and related handling of pesticides or

<sup>1</sup> Growmark also filed comments stating essentially the same information as presented at hearing. (PC# 2.)

<sup>2</sup> The transcripts for each hearing were not numbered consecutively. The citation to the transcript of the first hearing will be "Tr. at X" and the transcript of the second hearing will be "Tr.2 at X".

<sup>3</sup> The facilities are "agrichemical facilities, as defined by the Illinois Pesticide Act and the Illinois Fertilizer Act" (Section 14.6(a)(1) of the Act) and "lawn care facilities that are subject to the waste water containment area provisions of the Lawn Care Products Application and Notice Act" (Section 14.6(a)(2) of the Act.)

<sup>4</sup> Included is any facility at "a central location that is not an agrichemical facility" (Section 14.6(a)(3) of the Act) or "any other affected facility" (Section 14.6(a)(4) of the Act.)

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)~~; or has filed a written certification of intent pursuant to Section 14.6 of the Act ON THE APPROPRIATE LICENSE OR RENEWAL APPLICATION FORM SUBMITTED TO THE DEPARTMENT OF AGRICULTURE OR OTHER APPROPRIATE AGENCY (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.

(Exh.2 at Attachment I)

#### STAY OF APPLICABILITY OF RULES

At first notice the Board noted that the rule-promulgation steps under the Illinois Administrative Procedure Act do not provide for the time necessary for the proposed amendments to be effective by January 1, 1993. Accordingly, the Board asked interested persons to consider what action, if any, might be appropriate to bridge the period between January 1, 1993 and some subsequent effective date.

Growmark (PC #2 and Tr. at 8-9), IFCA (Tr. at 6), and Farm Bureau (PC #5) request that the Board undertake some action to avert the possibility of enforcement brought for failure to comply with Part 615 or 616 during the time the instant action is pending. The Board believes that this request is reasonable, and is best accommodated by a Board order staying the effectiveness of Part 615 and 616 for facilities that opt to participate in the Department of Agriculture's alternate groundwater program, as specified below. That stay is ordered today.

#### ORDER

The Board hereby stays the effectiveness of the 35 Ill. Adm. Code Parts 615 and 616 as these parts apply to facilities for the storage and handling of pesticides or fertilizers that have filed a written notice of intent or a certification of intent pursuant to Section 14.6 of the Illinois Environmental Protection Act with the Illinois Department of Agriculture by January 1, 1993. This stay terminates upon the effective date of the rules promulgated by the Board in the instant rulemaking, Docket R92-20.

0138-0217

The Board hereby directs that second notice of the following proposed amendments be submitted to the Joint Committee on Administrative Rules.

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
  - 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).

0138-0218

- 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 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; or has filed a written certification of intent pursuant to Section 14.6 of the Act ON THE APPROPRIATE LICENSE OR RENEWAL APPLICATION FORM SUBMITTED TO THE DEPARTMENT OF AGRICULTURE OR OTHER APPROPRIATE AGENCY (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


- 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 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; or has filed a written certification of intent pursuant to Section 14.6 of the Act ON THE APPROPRIATE LICENSE OR RENEWAL APPLICATION FORM SUBMITTED TO THE DEPARTMENT OF AGRICULTURE OR OTHER APPROPRIATE AGENCY (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 17<sup>th</sup> day of December, 1992, by a vote of 7-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board