

ILLINOIS POLLUTION CONTROL BOARD

January 21, 1993

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

Adopted Rule.

Final Order.

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

Public Act 87-1108 (Senate Bill 1750) amends the Illinois Environmental Protection Act at Section 14.6 (Ill. Rev. Stat. 1991, ch. 111½, par. 1014.6) to provide an alternative groundwater protection program for certain agrichemical facilities that otherwise would be subject to the Board regulations found at 35 Ill. Adm. Code 615 and 616. The Part 615 and 616 rules, which had an effective compliance date of January 1, 1993, regulate new and existing agrichemical facilities that are located within setback zones of potable water wells.

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. This is accomplished by appending to Sections 615.105 and 616.106 the exception procedure provided under PA 87-1108.

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.

On December 17, 1992 the Board adopted a second notice proposal, which was identical to the first notice proposal except for a clarifying modification made at the recommendation of the

0138-0841

Agency (See Second Notice Opinion and Order). In addition, the Board on December 17, 1992 stayed the applicability of Parts 615 and 616 to affected facilities pending completion of the instant rulemaking. The stay will expire by its terms upon filing with the Secretary of State of today's order.

On January 12, 1993 the Joint Committee on Administrative Rules (JCAR) issued a certificate of no objection to the instant amendments. However, JCAR and the Board agreed that if it takes action to stay a regulatory program or to exempt any person from a regulatory program, such stay or exemption will be effectuated through emergency or permanent rulemaking, and not solely through an order of the Board.

### 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 recommended that the amendments be adopted. (Tr. at 5-8; Tr.2 at 7<sup>2</sup>) In addition, during the first notice comment period the McHenry County Defenders, Citizens for a Better Environment, and the Illinois Chapter of the Sierra Club collectively (PC #4) plus the Illinois Farm Bureau (PC #5) filed recommendations for adoption of the amendments.

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 alternative programs rules are developed. (Tr. at 7.)

### ORDER

The Board directs the Clerk of the Board to submit the text of the following amendments to the Secretary of State for final notice pursuant to Section 6 of the Illinois Administrative Procedure Act.

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

<sup>1</sup> Growmark also filed comments stating essentially the same information as presented at hearing.

<sup>2</sup> Tr. at \_\_\_ and Tr.2 at \_\_\_ refer to the transcripts of the two hearings, respectively.

0138-0842

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); or
  - 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

0138-0843

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- ; or
  - 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

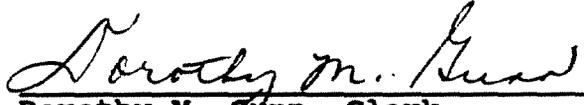
0138-0844

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 31<sup>st</sup> day of January, 1993, by a vote of 6-0.

  
\_\_\_\_\_  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

0138-0845