

ILLINOIS POLLUTION CONTROL BOARD
February 7, 1980

BRADLEY HEIGHTS WATER SYSTEM, INC.,)
)
Petitioner,)
)
v.) PCB 79-107
)
)
ENVIRONMENTAL PROTECTION AGENCY,)
)
)
Respondent.)

MR. STEVEN L. NORDQUIST: NORDQUIST & ANDERSON appeared on behalf of Petitioner.

MS. NANCY J. BENNETT, ASSISTANT ATTORNEY GENERAL, appeared on behalf of the Agency.

OPINION AND ORDER OF THE BOARD (by Mr. Dumelle):

Petitioner has requested a variance from Rule 305: Chlorination of Chapter 6: Public Water Supplies and Technical Policy Statement 212 D.2: Hydropneumatic Storage Facilities adopted by the Agency under authority delegated by the Board under Rule 212: Design, Operation and Maintenance Criteria of Chapter 6: Public Water Supplies. The Agency has recommended that the variance be granted in part and denied in part. A hearing was held at City Hall in Rockford on November 19, 1979.

Petitioner operates a public water supply which serves approximately 50 families in an unincorporated area near Rockford (R.12). The supply consists of two pumps which draw from wells which are 125 and 450 feet deep (R.25). Both pumps direct water into one main which consists of 50 year old small size pipe running directly to service connections behind each customer's home (R.26). The supply does not include any hydrants (R.26). Fluoride is presently being added, but chlorine is not (R.31). The main runs generally behind each home (R.27). All homes in the system discharge to sewers in front of each home which carry sewage to facilities operated by the Rockford Sanitary District (R.77). The pumps lie 100 feet above the flood stage of the

Rock River, and no surrounding subdivision is higher (R.76). Whenever a break occurs in a main, the area round the break is cleaned and low pressure is avoided (R.32). Pressure in the system is then dropped to zero and the customers are instructed not to drink the water until the certified operator has received satisfactory results from bacteriological samples (R.33). Petitioner's present fluoridation metering system can be used to temporarily chlorinate the system in the event of an emergency (Petition, p.2).

A soft red material, identified as nuisance bacteria (R. 29, Ex.2) pervades the system (R.55,91). Chlorination would kill this bacteria and cause it to slough off (R.31,92). The bacteria could be removed with mechanical cleaning. One estimate to do this cleaning came to \$20,000 (R.71). Hydrants could be added to aid in flushing the system at a cost of \$5-8,000 without including necessary landscaping (R.75). Mechanical cleaning might damage the weaker portions of the mains (R.99). Under present circumstances, flushing would have to be done through each home in the system and might cause damage there (R.95). The entire system could be replaced at a cost of approximately \$60-70,000 (R.98). While chlorination would remove the bacteria, the sloughing off process would take at least 3-5 months (R.87).

Petitioner feels that it should not be required to pursue any of these alternatives. A bill which is presently pending before the General Assembly could require the entire area to be annexed to the City of Rockford. The bill is expected to be adopted into law (R.21). Petitioner feels that installation of chlorination at an initial cost of \$12,100 and a yearly cost of \$5,500, which translates to costs of \$220 and \$100 per family respectively (Petition-attachment), or any of the costs listed above for cleaning would be unreasonable in this case. Petitioner claims that it knows of no health problems which can be attributed to its presently unchlorinated system (R.14). In addition Petitioner feels that chlorination would endanger the system by causing the formation of trihalomethanes (R.143) although no evidence was submitted to show that the necessary organics occur in the system to form these compounds.

The Agency feels that installation of a hypochlorinator would cost \$500-750 (R.157). The Agency admits that Petitioner's lack of hydrants makes its system unique but feels that the system could be flushed through individual taps (R.160). In its Recommendation the Agency places an estimate for installation of chlorination at \$20.50 per family initially and \$1.50 per year thereafter (Paragraph 8).

The Board concludes that denial of a variance from Rule 305 would constitute arbitrary or unreasonable hardship. Petitioner's circumstances are unique in that the present water system may be replaced in the near future with the passage of Senate Bill 1404. Faced with that contingency, Petitioner should not be required to incur capital expenses for chlorination. Because Petitioner's system is so small, incidences of contamination should be avoided through initiation of a program to prevent cross connections. While the record contains substantial evidence of the need to postpone installation of expanded hydropneumatic storage facilities, the Board concludes that the Agency alone has jurisdiction to grant initial relief from this requirement. The Technical Policy Statement which underlies this requirement is an Agency rule which has never been proposed to or adopted by the Board. In an Opinion dated January 10, 1979, the Attorney General looked with favor on the Board's own interpretation of Rule 212 when the Board adopted the Rule. In its Opinion in R73-13 dated January 3, 1975 the Board stated that Technical Policy Statements should be challenged in the context of a permit appeal. The Board concludes that a period of two years should provide ample time to await the outcome of Senate Bill 1404 and the accompanying replacement of Petitioner's present system after annexation.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. Petitioner is hereby granted a variance from Rule 305 of Chapter 6: Public Water Supplies for two years from the date of this Order subject to the following conditions:
 - A) Within 60 days of the date of this Order, Petitioner shall submit an acceptable plan to the Agency which shall detail Petitioner's program to minimize contamination through sanitation practices and the prevention of cross connections.
 - B) Within 45 days of the date of this Order, Petitioner shall execute a certification of acceptance and agreement to be bound to the terms and conditions of this variance. This 45 day period shall be held in abeyance if this matter is appealed. The certification shall be forwarded to the Illinois Environmental Protection Agency, Division of Public Water Supplies, 2200 Churchill Road, Springfield, Illinois 62706 and shall read as follows:

CERTIFICATION

I, (We), _____, having
read and fully understanding the Order in PCB 79-107, hereby
accept that Order and agree to be bound by all of its terms
and conditions.

SIGNED _____

TITLE _____

DATE _____

2. Petitioner's request for a variance from Technical Policy statement 212 D.2 is hereby denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 71st day of February, 1980 by a vote of 4-0.


Christan L. Moffett Clerk
Illinois Pollution Control Board