

ILLINOIS POLLUTION CONTROL BOARD
March 2, 2000

THREE COUNTY PUBLIC WATER DISTRICT,)	
)	
)	
Petitioner,)	
)	
v.)	PCB 00-114
)	(Variance - Water)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
)	
Respondent.)	

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

This matter is before the Board on a February 7, 2000 amended petition for variance filed by the Three County Public Water District (Three County). Three County seeks relief for its water supply distribution system from 35 Ill. Adm. Code 602.106(a) "Restricted Status" to the extent it involves the Maximum Contaminant Level (MCL) for total trihalomethanes (TTHM) in 35 Ill. Adm. Code 611.310(c), for a period of time up to March 1, 2001, or until such time as analysis pursuant to 35 Ill. Adm. Code 605.104(a) shows compliance, whichever occurs first.¹ Three County desires the variance so that it may expand its system and provide another approximately 35 miles of 4" and 6" water mains to serve an additional 161 users. Pet. at 4.² Three County waived hearing and no hearing was held. Three County's motion for expedited decision was granted on February 17, 2000. The Board grants Three County's variance petition as discussed below.

The Board's responsibility in this matter arises from the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (1998)). The Board is responsible for granting variances from Board regulations whenever it is found that compliance with the regulations would impose an arbitrary or unreasonable hardship upon a petitioner. See 415 ILCS 5/35(a) (1998). The Illinois Environmental Protection Agency (Agency) is required to investigate each variance petition and make a recommendation to the Board for the disposition of the petition. See 415 ILCS 5/37(a) (1998).

The Agency filed its recommendation on February 14, 2000. The Agency recommends that a variance from both 35 Ill. Adm. Code 602.106 "Restricted Status" and from 35 Ill. Adm. Code 602.105(a) "Standards for Issuance" be granted. The Agency recommends that the

¹ Three County refers to 35 Ill. Adm. Code 605.104(a). Analysis for TTHM is now to be performed pursuant to 35 Ill. Adm. Code 611.680.

² Three County's variance petition will hereinafter be referred to as "Pet. at ____."; the Agency's recommendation will hereinafter be referred to as "Ag. Rec. at ____."

variance be granted for the time period requested and that it be subject to certain conditions as discussed more fully below. Three County has not responded to the recommendation.

BACKGROUND

Three County is located in Madison County, Illinois. Three County provides potable water to a population of approximately 2,450 persons, including residential and agricultural users. Pet. at 4. Three County is a special district organized in 1979 to provide potable domestic water to portions of Madison, Bond, and Montgomery Counties. Pet. at 4. Three County owns and operates the water distribution system in its boundaries, but purchases its water from the City of Litchfield (Litchfield) on its north end and the Bond-Madison Water Company (Bond-Madison) on its south end. Pet. at 4; Ag. Rec. at 4. Water is provided to all residential and agricultural users as needed and charges, as established by ordinance, are imposed on all users. Ag. Rec. at 4.

The Agency first advised Three County that its water exceeded the MCL for TTHM on October 22, 1999. Ag. Rec. at 4. On November 16, 1999, a violation notice was sent to Three County for exceeding the MCL for TTHM. Ag. Rec. at 5.

The most recent analyses for Three County's water supply revealed the following concentrations of TTHM:

Test Date	Level
November 1999	0.075 mg/L
August 1999	0.071 mg/L
May 1999	0.239 mg/L
February 1999	0.172 mg/L
Annual Average	0.139 mg/L

Ag. Rec. at 5. The MCL for TTHM is .10 mg/L. 35 Ill. Adm. Code 611.310(c).³

Three County has no treatment facilities of its own, and therefore does not treat the water it receives from Litchfield and Bond-Madison. Ag. Rec. at 5. Three County plans to install an ammonia feed system at two booster pump stations. Pet. at 5. The improvements are expected to allow Three County to be in compliance with the MCL for TTHM. Ag. Rec. at 5. Three County cannot wait to see if compliance is achieved from these improvements due to a pending grant of \$400,000 that requires construction of the water main extension to be completed by March 2001. Pet. at 4.

Three County requests this variance for a period up to and including March 1, 2001, or until such time as analysis pursuant to 35 Ill. Adm. Code 605.104(a) shows compliance with the

³ For a discussion of the applicability of the MCL for TTHM to small system suppliers see Village of White City v. IEPA (March 2, 2000), PCB 00-68.

MCL for TTHM, whichever occurs first. Pet. at 1. The Agency recommends that the variance be granted. Ag. Rec. at 6.

REGULATORY FRAMEWORK

Three County’s variance request and the Agency’s recommendation involve two of the Board’s public water supply regulations, but only as those regulations apply to TTHM; 35 Ill. Adm. Code 602.105(a) “Standards of Issuance” and 35 Ill. Adm. Code 602.106(a) “Restricted Status.” The MCL for TTHM is set forth in 35 Ill. Adm. Code 611.310(c). Those regulations provide, in pertinent part, as follows:

602.105(a) “Standards for Issuance”

- (a) The Agency shall not grant any construction or operating permit required by this Part, except as otherwise provided in subsection (d) of this Section, unless the applicant submits adequate proof that the public water supply will be constructed, modified, or operated so as not to cause a violation of the Environmental Protection Act . . . or of this Chapter.

602.106(a) “Restricted Status”

- (a) Restricted status shall be defined as the Agency determination, pursuant to Section 39(a) of the Act and Section 602.105, that a public water supply facility may no longer be issued a construction permit without causing a violation of the Act or this Chapter.

611.310 “Old Maximum Contaminant Levels (MCLs) for Organic Chemicals”

The following are the MCLs for organic chemicals. The MCLs for organic chemicals in subsections (a) and (b) apply to all CWSs. Compliance with the MCLs in subsections (a) and (b) is calculated pursuant to Section 611.641 et seq. Compliance with the MCL for TTHM is calculated pursuant to Subpart P.

Contaminant	Level mg/L	Additional State Requirement (*)

c) TTHM	0.10	*

The cumulative effect of these regulations is that community water supply systems (CWSs) are prohibited from extending water service unless and until their water meets all of the

applicable regulatory standards. A CWS not meeting a MCL, such as Three County, is placed on the Agency's "Restricted Status" list. A grant of variance from the "Standards for Issuance" or "Restricted Status" listing neither absolves a petitioner from compliance with a MCL, nor insulates a petitioner from a possible enforcement action for violation of those standards. The underlying standards remain applicable to the petitioner regardless of whether a variance is granted or denied. City of Altamont v. IEPA (December 7, 1995), PCB 96-65. Three County requests the present variance in order to extend its water service while compliance is attained through the construction and operation of its ammonia feed system.

In determining whether to grant a variance, Section 35 of the Act requires the Board to determine whether a petitioner has presented adequate proof that immediate compliance with the Board's regulations would impose an arbitrary or unreasonable hardship. 415 ILCS 5/35(a) (1998). Furthermore, the burden is on the petitioner to show that its claimed hardship outweighs the public interest in attaining compliance with regulations designed to protect the public. Willowbrook Motel v. Pollution Control Board, 135 Ill. App. 3d 343, 481 N.E.2d 1032 (1st Dist. 1985). Only with such a showing can the claimed hardship rise to the level of an arbitrary or unreasonable hardship.

A variance provides only temporary relief from compliance with the Board's regulations. Compliance is to be sought regardless of the hardship which the task of eventual compliance presents to an individual polluter. Monsanto v. Pollution Control Board, 67 Ill. 2d 276, 367 N.E.2d 684 (1977). Accordingly, as a condition to the granting of a variance, a petitioner must commit to a plan which is reasonably calculated to achieve compliance within the term of the variance, unless certain special circumstances exist.

COMPLIANCE PLAN

Three County receives its potable water directly from Litchfield and Bond-Madison and does not presently have any treatment facilities of its own. Ag. Rec. at 4. The Madison County Board approved Three County's request for a variance to allow construction of the building to house its ammonia and chlorine feed equipment on January 19, 2000. Pet. at 5. The Agency issued a construction permit for the ammonia feed system on January 26, 2000. Ag. Rec. at 6. The improvements are expected to allow Three County to be in compliance with the MCL for TTHM. Pet. at 5.

The Agency recommends that Three County continue its sampling program to monitor the level of TTHM in its water supply. Ag. Rec. at 13. This sampling program consists of the collection and analysis of quarterly samples obtained from Three County's distribution system at locations approved by the Agency in accordance with 35 Ill. Adm. Code 611.680. Ag. Rec. at 13. The analysis must be performed by a laboratory certified by the State of Illinois for TTHM analysis, and the results must be reported to the Agency within 30 days of receipt, with the running average of the most recent four quarterly sample results being reported to the Agency within 30 days of receipt of the most recent quarterly sample result. Ag. Rec. at 13.

The Agency also proposes some additional requirements as a condition of its recommendation that the Board grant Three County's variance. Specifically, the Agency recommends that Three County, in its first set of water bills, or within three months after the date of the Board's variance order, whichever occurs first, provide written notice to each user of its public water supply to the effect that it has been granted a variance from 35 Ill. Adm. Code 602.105(a) and 602.106(a). Ag. Rec. at 14. Furthermore, if the results of any quarterly sample analysis reveal a violation of the MCL for TTHM, the Agency recommends that Three County be required to give public notice pursuant to 35 Ill. Adm. Code 611.851(b). Ag. Rec. at 14. The Agency also recommends that Three County be required to provide progress reports to the Agency every six months on the status of its efforts to comply with the above requirements. Ag. Rec. at 14.

HARDSHIP

Three County contends that the Board's denial of the requested variance would impose an arbitrary and unreasonable hardship. Pet. at 6. Denial of the variance would result in the loss of funding in the amount of \$400,000 from the Department of Commerce and Community Affairs (DCCA) and remaining funding, which is contingent on the DCCA grant, will also likely be lost. Pet. at 6.

The Agency agrees that denial of the variance would result in an arbitrary and unreasonable hardship because denial of the variance would require the Agency to continue denying any new construction and operating permits for new water main extensions. Ag. Rec. at 9. The Agency notes that Three County currently has public funds pending on an expansion project, for which it is receiving a \$660,000 loan, a \$400,000 grant from DCCA, and a \$307,500 grant from Rural Development, and that the DCCA grant has a condition that construction must be complete by March 2001 or the grant will be lost. Ag. Rec. at 10.

ENVIRONMENTAL IMPACT

According to the Agency, TTHM is an organic chemical consisting of one carbon atom and three halogen atoms. Ag. Rec. at 7. TTHM is formed as a byproduct when drinking water is disinfected with chlorine. TTHM may be carcinogenic and can lead to liver or kidney disorders, birth defects, and central nervous system damage. Ag. Rec. at 8. Three County suggests that the granting of this variance will not cause harm to the environment or to the people served by the water supply system. Pet. at 6. Three County adds that the concentrations of TTHM in the community water supply will not pose a significant health risk due to the limited time period of the requested variance. Pet. at 6. Three County admits, however, that it has not made a formal assessment of the effect of the variance on the environment. Pet. at 6.

The Agency agrees that a temporary increase in the allowable concentration for TTHM should cause no significant health risk for the limited population served by Three County and for the limited time period recommended for the variance. Ag. Rec. at 9.

CONSISTENCY WITH FEDERAL LAW

The Agency states that Three County may be granted a variance consistent with the requirements of the Safe Drinking Water Act (42 U.S.C. Section 300(f)), and the United States Environmental Protection Agency (USEPA) Drinking Water Regulations (40 C.F.R. Part 141 (1998)) because the requested relief would not represent a variance from national primary drinking water regulations. Ag. Rec. at 11. Granting the requested variance from the effects of restricted status listing means that only State of Illinois criteria for granting or denying variances are relevant. Ag. Rec. at 11.

The Agency states that even a grant of the variance to Three County still leaves Three County subject to the possibility of federal enforcement for violations of the MCL for TTHM. Ag. Rec. at 11. The Agency notes, however, that due to the continuing progress toward compliance, the USEPA should not object to the requested variance should the Board decide to issue it. Ag. Rec. at 12.

CONCLUSION

Based on the record, the Board finds that immediate compliance with 35 Ill. Adm. Code 602.105(a) "Standards for Issuance" and 35 Ill. Adm. Code 602.106(a) "Restricted Status" regulations would impose an arbitrary and unreasonable hardship on Three County. The Board also finds that granting this variance does not pose a significant health risk to those persons served by Three County's water supply.

Consistent with the Agency's recommendation, we will grant Three County a variance which will expire on March 3, 2001, 12 months after entry of this order. This will give Three County time to complete four quarterly samples, monitor the water and make adjustments, if necessary, to ensure that it is in compliance with the MCL for TTHM.

The Board's action is solely a grant of variance from 35 Ill. Adm. Code 602.105(a) "Standards for Issuance" and 35 Ill. Adm. Code 602.106(a) "Restricted Status" as they relate to TTHM. The Board is not granting Three County a variance from compliance with the MCLs for TTHM.

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

ORDER

Three County Public Water District (Three County) is hereby granted a variance from 35 Ill. Adm. Code 602.105(a) "Standards for Issuance" and 35 Ill. Adm. Code 602.106(a) "Restricted Status" as they relate to the maximum contaminant level (MCL) for total trihalomethanes (TTHM) in drinking water as set forth in 35 Ill. Adm. Code 611.310(c),

subject to the following conditions:

1. The variance terminates March 2, 2001.
2. In consultation with the Illinois Environmental Protection Agency (Agency), Three County shall continue its sampling program to determine as accurately as possible the level of TTHM in its public water supply.
3. Until this variance expires, petitioner shall collect and analyze quarterly samples of its water from its distribution system at locations approved by the Agency, in accordance with 35 Ill. Adm. Code 611.680. Analysis shall be done by a laboratory certified by the State of Illinois for TTHM analysis so as to determine the concentration of the contaminant in question. The results of the analysis shall, within 30 days of receipt of the most recent quarterly sample, be reported to:

Illinois Environmental Protection Agency
Division of Public Water Supplies
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

4. Pursuant to 35 Ill. Adm. Code 611.851(b), in its first set of water bills, or within three months after the date of the Board's variance order, whichever occurs first, and every three months thereafter, Three County will send to each user of its public water supply, a written notice to the effect that it has been granted a variance by the Board from 35 Ill. Adm. Code 602.105(a) "Standards for Issuance" and 35 Ill. Adm. Code 602.106(a) "Restricted Status," as they relate to the MCL for TTHM. The notice shall state the average content of TTHM in samples taken since the last notice period during which samples were taken.
5. Until compliance is reached, Three County shall take all reasonable measures with its existing equipment to minimize the level of TTHM in its finished drinking water.
6. Three County shall provide written progress reports to the Agency every six months, concerning steps taken to comply with paragraphs 2, 3, and 4 of this order. Progress reports shall quote each of these paragraphs and immediately below each paragraph state what steps have been taken to comply with that paragraph. Three County shall provide these progress reports to the following

address:

Illinois Environmental Protection Agency
Field Operations Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

- 7. If Three County chooses to accept this variance, within 45 days of the grant of the variance, Three County must execute and forward the certificate of acceptance to:

Stephen C. Ewart
Deputy Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

CERTIFICATION

I (We), _____, hereby accept and agree to be bound by all terms and conditions of the order of the Pollution Control Board in PCB 00-114, dated March 2, 2000.

Petitioner

Authorized Agent

Title

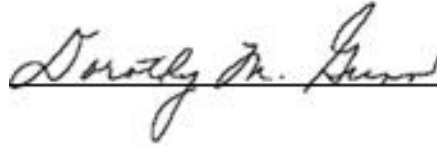
Date

Once executed and received, this certificate of acceptance and agreement shall bind Three County to all terms and conditions of the granted variance. The 45-day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the certificate within 45 days renders this variance void.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 2nd day of March 2000 by a vote of 6-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board