

ILLINOIS POLLUTION CONTROL BOARD  
April 6, 1989

VILLAGE OF ELBURN, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 88-204  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

OPINION AND ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board upon a December 27, 1988 petition for extension of variance, filed by the Village of Elburn ("Elburn"). Elburn is requesting an extension of the variance granted by the Board on April 20, 1988 in PCB 88-4, as revised in part in a June 16, 1988 Board Order. Elburn's request for extension, as well as the earlier variance, seeks relief from 35 Ill. Adm. Code 602.105(a) "Standards for Issuance" and from 35 Ill. Adm. Code 602.106(b) "Restricted Status", but only as those rules relate to the combined radium-226 and radium-228 standard of 35 Ill. Adm. Code 604.301(a). Elburn requests a four year extension.

On January 24, 1989, the Illinois Environmental Protection Agency ("Agency") filed a Recommendation to grant the variance, subject to conditions. Elburn waived its right to a hearing in this matter and consequently no hearing was held.

BACKGROUND

Elburn, located in Kane County, provides a community water supply for approximately 1,423 residents and 192 industries and businesses. Elburn's distribution system includes two deep wells, one shallow well, one elevated tank, three pumps and one distribution facility. Elburn's deep well #1 extends to a depth of 1,350 feet and was placed in operation in 1905. According to Elburn, deep well #1 is still in service as a standby but has not been used for the last five years. Deep well #3, which extends to 1,395 feet, was placed into operation in December, 1975. Elburn's shallow well extends to a depth of 152 feet and was placed in operation in March, 1937. (P. at 5).

In January 1985, the Agency notified Elburn that it had been placed on Restricted Status because a composite sample showed

that the Elburn water supply was in violation of the 5.0 pCi/l combined radium standard. Representative test results have indicated the following:

<u>Date</u>	<u>Value</u>
September 1984	12.1 pCi/l
December 1986	7.2 pCi/l
October 1988	9.7 pCi/l

(P. at 2).

In PCB 88-4, Elburn sought a five-year variance from the combined radium standard. The Board granted Elburn a 13-month variance to "allow Elburn to formally secure professional assistance, investigate compliance options and submit a compliance plan to which it is firmly committed." (PCB 88-4, April 21, 1988 and upon reconsideration, June 16, 1988). Elburn maintains that it has complied with the Board's Order in PCB 88-4 and that it is now able to proceed with a definite compliance plan. Elburn's current variance petition seeks a four-year extension allowing Elburn sufficient time, plus a ten month leeway to allow for unavoidable construction delays or scheduling error, to implement the thirty-eight month compliance plan approved by Elburn on December 5, 1988.

#### COMPLIANCE PLAN

Elburn's chosen compliance method involves the phased construction of three deep wells (of which one will be on stand-by) and an ion-exchange treatment facility with an anticipated total cost of \$2,018,300. (P. at 5 and Attach. "A"). Elburn states that this plan allows for phased construction of well and treatment facilities to reduce the initial construction cost. Under Elburn's plan, two wells and one ion-exchange treatment unit will be utilized to meet demands until 1998 when an additional well and ion-exchange unit will become necessary. In phase I of the plan, Elburn's current deep well no. #3 pump will be replaced with a new pump and a new well will be constructed approximately 1,500 feet from the existing well. In phase II, an additional well will be constructed approximately 1,500 feet from the other two wells. (P. at Attach. "A", sec. 5, p. 31). Regarding alternative compliance plans, Elburn stated that it "opted for the ion-exchange process in lieu of the shallow well construction primarily because of the high cost attributed to locating a shallow well and transmitting the water." (P. at. 5).

In the Agency's Recommendation, it states that if properly designed, Elburn's Phased Ion Exchange Treated Deep Well Water Construction would be an acceptable means of meeting the radium standard. The Agency also makes several observations regarding Elburn's compliance schedule: the preliminary design and design phase is one month too long; the owner and regulatory review

phase should be increased by one month; and one month should be decreased from the construction period and added to the bidding and analysis phase. (Agency Rec. at par. 28). These suggestions by the Agency have been incorporated into the Board's Order following this Opinion.

#### HARDSHIP AND ENVIRONMENTAL IMPACT

The Agency states that denial of this variance would result in an arbitrary and unreasonable hardship because the Agency would be required to continue to deny construction and operating permits until compliance is achieved. Further, the Agency states that "continuation of Restricted Status means that no new water main extensions could be issued by the Agency and economic growth, etc., dependent on those water main extensions would not be allowed." (Agency Rec. at. par. 20).

Elburn states the following in regard to the hardship that would be imposed if this variance were denied:

Imposition of restricted status has had a negative impact on Elburn. Elburn has recently carried out a number of public projects which it has been struggling to pay for. In December 1980, Elburn expanded its sewage treatment plant to service its existing residential and commercial customers as well as its expected growth. This required a \$430,000 General Obligation Bond issue in 1978. In addition Elburn, in October 1986, completed the necessary construction of a new water tower to provide a safe and adequate storage capacity for its water supply system. Again, this project was sized to serve the existing residents and commercial customers, as well as anticipated growth. The Agency's Division of Public Water Supply had informed Elburn that it needed to provide additional storage and system pressure. The construction of the new water tower cost approximately \$750,000. Elburn used \$50,000 from existing operating funds, a \$200,000 Community Development Assistance Program grant and \$500,000 General Obligation Bonds issued in 1986 to raise the necessary funds.

Elburn has suffered a severe financial blow as its principal wastewater generator and employer closed its facility on April 12, 1985. Kneip Company announced the closing of its meat packing operations in February 1985 and closed its facility on April 12, 1985.

This resulted in a loss of 85 jobs and \$133,904 in wastewater treatment revenue to the Village of Elburn which represents approximately 25% of Elburn's total revenue. In addition, Elburn was left with a wastewater treatment system designed and sized to accommodate waste from the meat packing company and upon which its rates were based. Without the waste from the meat packing plant, the existing sewage treatment plant is operating at approximately 25% of capacity with a resulting loss in anticipated and needed revenue. As a result, Elburn is struggling to pay off the approximately \$930,000 for General Obligation Bonds for the cost of the new water tower and sewage treatment plant expansion. (P. at 6).

Regarding environmental impact, the Agency states that "while radiation at any level creates some risk, the risk associated with this level is very low." (Agency Rec. at par. 15). Further, the Agency states that it believes that the variance will "impose no significant injury on the public or on the environment for the limited time period of the requested variance." (Agency Rec. at Par. 19). The Agency concludes that denial of the recommended variance would be an arbitrary or unreasonable hardship on Elburn.

#### CONCLUSION

Based on the record before it, including environmental impact, the Board finds that Elburn has presented adequate proof that immediate compliance with 35 Ill. Adm. Code 602.105(a) and 602.106(b) would impose an arbitrary or unreasonable hardship upon Elburn. Accordingly, the Board will grant the requested relief, subject to conditions.

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

#### ORDER

1. The Village of Elburn ("Elburn") is hereby granted a variance from 35 Ill. Adm. Code 602.105(a) "Standards for Issuance" and 602.106(b) "Restricted Status", but only as they relate to the combined radium-226 and radium-228 standard of 35 Ill. Adm. Code 604.301(a), subject to the following conditions:
  - (A) This variance expires April 6, 1993 or when analysis pursuant to 35 Ill. Adm. Code 605.104(a) shows compliance with the standard for combined radium, whichever occurs first.

- (B) In consultation with the Agency, Elburn shall continue its sampling program to determine as accurately as possible the level of radioactivity in its wells and finished water. Until this variance expires, Elburn shall collect quarterly samples of its water from its distribution system at locations approved by the Agency. Elburn shall composite the quarterly samples from each location separately and shall analyze them annually by a laboratory certified by the State of Illinois for radiological analysis so as to determine the concentration of the contaminant in question. The results of the analyses shall be reported to the Compliance Assurance Section, Division of Public Water Supplies, 2200 Churchill Road, Illinois Environmental Protection Agency, Springfield, Illinois 62794-9276, within 30 days of receipt of each analysis. At the option of Elburn, the quarterly samples may be analyzed when collected. The running average of the most recent four quarterly sample results shall be reported to the above address within 30 days of receipt of the most recent quarterly sample.
- (C) By July 6, 1990, Elburn shall apply to IEPA, DPWS, Permit Section, for all permits necessary for construction of installations, changes or additions to Elburn's public water supply needed for achieving compliance with the maximum allowable concentration for the combined radium standard.
- (D) Within nineteen months after each construction permit is issued by IEPA, DPWS, Elburn shall advertise for bids, to be submitted within 60 days, from contractors to do the necessary work described in the construction permit. Elburn shall accept appropriate bids within a reasonable time. Elburn shall notify IEPA, DPWS, within 30 days, of each of the following actions: 1) advertisements for bids, 2) names of successful bidders, and 3) whether Elburn accepted the bids.
- (E) Construction allowed on said construction permits shall begin within a reasonable time of bids being accepted, but in any case, construction of all installations, changes or additions necessary to achieve compliance with the maximum allowable concentration for combined radium shall begin no later than May 6, 1991 and shall be completed no later than May 6, 1992.
- (F) Pursuant to 35 Ill. Adm. Code 606.201, in its first set of water bills or by July 6, 1989, whichever occurs first, and every three months thereafter, Elburn shall send to each user of its public water supply a written notice to the effect that Elburn has been granted a

variance from 35 Ill. Adm. Code 602.105(a) Standards of Issuance and 35 Ill. Adm. Code 602.106(b) Restricted Status, as it relates to the MAC standard for combined radium.

- (G) Pursuant to 35 Ill. Adm. Code 606.201, in its first set of water bills or by July 6, 1989, whichever occurs first, and every three months thereafter, Elburn shall send to each user of its public water supply a written notice to the effect that Elburn is not in compliance with the combined radium standard. The notice shall state the average content of combined radium in samples taken since the last notice period during which samples were taken.
  - (H) Until full compliance is reached, Elburn shall take all reasonable measures with its existing equipment to minimize the level of combined radium in its finished drinking water.
  - (I) Elburn shall provide written progress reports to IEPA, DPWS, FOS every six months concerning steps taken to comply with this Order. Progress reports shall quote each of said paragraphs and immediately below each paragraph state what steps have been taken to comply with each paragraph.
2. Within forty-five days of the grant of this variance, Elburn shall execute and forward to Bobella Glatz, Enforcement Programs, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 627894-9276, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This variance shall be void if Elburn fails to execute and forward the Certificate within the 45-day period. The 45-day period shall be in abeyance for any period during which the matter is appealed. The form of the certification shall be as follows:

CERTIFICATION

I, (We), \_\_\_\_\_, having read the Order of the Illinois Pollution Control Board, in PCB 88-204, dated April 6, 1989, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

\_\_\_\_\_  
Petitioner

By: Authorized Agent

Title

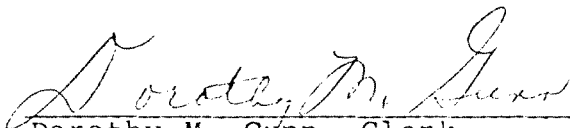
Date

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987 ch. 111 1/2 par. 1041, provides for appeal of Final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

J. D. Dumelle and B. Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 6<sup>th</sup> day of April, 1989, by a vote of 5-2.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board