

ILLINOIS POLLUTION CONTROL BOARD
August 4, 1988

MCINTOSH, LTD., - HOLDING, INC.)
 and)
)
TURNBERRY UTILITIES, INC.,)
)
 Petitioners,)
)
 v.) PCB 88-81
) PCB 88-88
) (Consolidated)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by M. Nardulli):

On July 18, 1988, Turnberry filed an amended petition and a motion for expedited decision. The Agency filed a Recommendation in support of grant of variance on July 19. Hearing was held on July 22, 1988 at which no members of the public were present. The transcript of that hearing has not as yet been received, although the Hearing Officer has forwarded a corrected Agency Recommendation which was submitted at hearing.

In its motion for expedited decision, Turnberry requests the Board to take action at its August 4, 1988 meeting stating:

Immediate resolution of this matter is needed in order to allow Petitioner's public water utility service in Lakewood, McHenry County, Illinois to continue providing existing customers at the Turnberry Development with drinking water, as well as to provide new homeowners with essential water supply.

McIntosh, Ltd. - Holdings, whose Amended Petition for Variance (PCB 88-81) has been consolidated with this proceeding, has an urgent need for Petitioner to obtain a variance from the fluoride standard so that McIntosh may obtain necessary construction and operating permits. McIntosh, Ltd. - Holdings has indicated that it supports the instant motion for expedited decision.

The Illinois EPA has reaffirmed its intention to recommend in the immediate future that the Pollution Control Board act to raise the 2.0 mg/l standard to the 4.0 mg/l maximum promulgated by the U.S. EPA.*

While the Board would ordinarily hold decision pending receipt of transcripts, under these circumstances, the Board will proceed to decide the case, with an Opinion to follow.

The Board finds that denial of variance to Turnberry would impose an arbitrary or unreasonable hardship, and grants variance subject to conditions as suggested by the Agency. The Board will grant variance solely to Turnberry, which is the operator of the public water supply. Variance to McIntosh Ltd. - Holdings is unnecessary, as variance to Turnberry provides all necessary relief and as all conditions to the variance require actions only by Turnberry.

Petitioner, Turnberry Utilities, Inc. is hereby granted variance from 35 Ill. Adm. Code 602.105(a) Standards for Issuance, and 602.106(b) Restricted Status, but only as they related to the 2.0 mg/l fluoride standard contained in 35 Ill. Adm. Code 604.202 fluoride, from May 16, 1988 to May 16, 1991 subject to the following conditions:

A) This variance expires on May 16, 1991 or when analysis pursuant to 35 Ill. Adm. Code 605.103 and 604.204(a) shows compliance with the maximum allowable concentration, whichever occurs first.

(B) Petitioner shall submit to the IEPA, DPWS, on or before February 16, 1990 an updated report prepared by its conducting engineers regarding the methods for fluoride removal examined by them and explaining in detail the recommended system for fluoride removal. As a part of this report, Turnberry shall identify the method for fluoride removal chosen. However, no report shall be required if Petitioner is in compliance as of February 16, 1990.

(C) In consultation with the Agency, Petitioner shall continue its sampling program to determine as accurately as possible the level of fluoride in its wells and finished water.

* The Board additionally notes that recent legislation, HB 4009, adopted by both Houses but not yet signed by the Governor, contains a provision which could affect this proceeding if it becomes law. The effect of this provision would be to raise the state fluoride standard here applicable from 2.0 mg/l to 4.0 mg/l, the current federal standard.

(D) In its first set of water bills or within three months after the date of this Variance Order, whichever occurs first, and every three months thereafter, Petitioner will send to each user of its public water supply and to the Agency a written notice to the effect that Petitioner has been granted by the Pollution Control Board 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 Maximum Allowable Concentration for Fluoride. This written notice shall conform to the requirements of 35 Ill. Adm. Code 606.205. Additionally, Petitioner shall notify the public of granted of variance by publication of written notice conforming to Section 606.205 in a daily newspaper of general circulation in the area served by the supply not later than 90 days after the grant. A copy of this publication shall be provided to the Agency. If the area is not served by a daily newspaper of general circulation, notice by newspaper shall instead be given by publication in a weekly newspaper of general circulation serves the area. If no weekly newspaper of general circulation serves the area, notice shall be given by posting the notice in conspicuous locations within the area served the supply. Petitioner shall notify new customers by mail delivery or hand delivery. (This condition conforms to the requirements set forth in Federal Reg., Vol. 52, No. 208 pp. 41534-41550).

(E) In its first set of water bills or within three months after the date of this Order, whichever occurs first, and every three months thereafter, Petitioner will send to each user of its public water supply, and to the Agency a written notice consisting of the following language and no additional language except as necessary to replace the superscripts.

"Dear User,

The U.S. Environmental Protection Agency requires that we send you this notice on the level of fluoride in your drinking water. The drinking water in your community has a fluoride concentration of¹ milligrams per liter (mg/l).

Federal regulations require that fluoride, which occurs naturally in your water supply, not exceed a concentration of 4.0 mg/l in drinking water. This is in enforceable standard called a Maximum Contaminant Level (MCL), and it has been established to protect the public health. Exposure to drinking water levels above 4.0 mg/l for many years may result in some cases of crippling skeletal fluorosis, which is a serious bone disorder.

¹ Community Water Supply shall insert the compliance result which triggered notification under this Part.

Federal law also requires that we notify you when monitoring indicates that the fluoride in your drinking water exceeds 2.0 mg/l. This is intended to alert families about dental problems that might affect children under nine years of age. The fluoride concentration of your water exceeds this federal guideline.

Fluoride in children's drinking water at levels of approximately 1 mg/l reduces the number of dental cavities. However, some children expose to levels of fluoride greater than about 2.0 mg/l may develop dental fluorosis. Dental fluorosis, in its moderate and severe forms, is a brown staining and/or pitting of the permanent teeth.

Because dental fluorosis occurs only when developing teeth (before they erupt from the gums) are exposed to elevated fluoride levels, households without children are not expected to be affected by this level of fluoride. Families with children under the age of nine are encouraged to seek other sources of drinking water for their children to avoid the possibility of staining and pitting.

Your water supplier can lower the concentration of fluoride in your water so that you will still receive the benefits of cavity prevention while the possibility of stained and pitted teeth is minimized. Removal of fluoride may increase your water costs. Treatment systems are also commercially available for home use. Information on such systems is available at the address given below. Low fluoride bottled drinking water that would meet all standards is also commercially available.

For further information, contact² at your water system.

Petitioner shall additionally notify new customers by mail delivery or hand delivery in the manner described in this paragraph when they begin service. (This condition conforms to the requirements set forth in Federal Register, Vol. 51, No. 63, pp. 11396-11412).

(F) Until full compliance is reached, Petitioner shall take all reasonable measure with its existing equipment to minimize the level of fluoride in its finished drinking water.

(G) The Petitioner shall provide written progress reports to IEPA, DWPS, FOS on August 16, 1990, January 16, 1991, concerning steps being taken to achieve compliance.

² Community Water Supply shall insert the name, address, and telephone number of a contact person at the PWS."

(H) That within forty-five days of the grant of the variance, Petitioner shall execute and forward to Bobella Glatz, Enforcement Programs, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62794-9276, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of the grant variance. The 45-day period shall be held in abeyance during any period that this matter is being appealed. Failure to execute and forward the Certificate within 45 days renders this variance void and of no force and effect as a shield against enforcement of rules from which variance was granted. The form of said Certification shall be as follows:

CERTIFICATION

I, (We), _____, having read the Order of the Illinois Pollution Control Board, in PCB 88-88, dated August 4, 1988, 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

(I) Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985 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 J. T. Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 4th day of August, 1988, by a vote of 5-2.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board