

ILLINOIS POLLUTION CONTROL BOARD  
February 4, 1988

CITY OF GENEVA, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 86-225  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by J. Anderson):

On January 4, 1988, the City of Geneva (Geneva) filed a Motion for Modification of certain conditions of the variance from restricted status with respect to combined radium. The variance was granted by the Board in PCB 86-225 on July 16, 1987. On January 21, 1988, the Illinois Environmental Protection Agency (Agency) filed a response supporting grant of Geneva's modification request, with a condition. On January 28, 1988, Geneva, filed a Reply accepting the Agency's condition.

The July 16, 1987 variance from restricted status was limited to thirteen developments listed in the Board's Opinion. On October 1, 1987, the Board affirmed the limitation to the thirteen developments in response to Geneva's August 20, 1987 motion for reconsideration.

Requested Relief

In its present motion, Geneva is again requesting relief from the limitation. Geneva wishes to provide water service to developments not on the list of thirteen. To this end, Geneva requests that the limitation be stated in population equivalents (PE) rather than specifically listing the thirteen developments. Its goal is to allow reallocation of the total P.E. represented by the thirteen named developments to any project the City designates. Geneva asserts that this modification would:

allow additional development to occur at other projects without increasing total overall population served which would otherwise be allowed assuming all thirteen projects were to proceed pursuant to the grant of a variance in this proceeding. (Geneva's motion, p. 2)

In its present motion (at p. 3), Geneva computes the population equivalents for the thirteen projects as 27,601 broken down as follows:

<u>Development</u>	<u>Est. Population Served</u>
R.R. Donnelley & Co.	12,760.0
Randall Square	3,000.0
Blackberry Subdivision	500.0
Williamsburg Development	1,536.0
Bennett House Townhomes	21.0
Stonebridge Subdivision	180.0
Delnor-Community Hospital	500.0
Kirk Rd. Off./Research Dev.	4,554.0
Geneva East Subdivision	2,318.0
Lucerne Development	1,500.0
Riverfront Redevelopment Plan	450.0
Denalco Demolition/Redevelopment	192.0
Geneva Place	90.0

Geneva reports that these figures were based on a recommended 3 person equivalents per residential unit. For those areas without an approved site plan, Geneva used 20 person equivalents per acre. The only exception to this was for the hospital, for which the City used 2.5 person equivalents times the proposed 200 bed design. (Geneva's motion, p. 3)

The Board notes that Geneva's population in the July 16, 1987 variance was estimated at about 10,500 in 1985 (See PCB 85-93, dated 7-1-85). It would appear, then, that pursuant to the original variance Geneva plans to provide water service to more than double its 1985 population.

The present variance expires on December 15, 1988. However, on January 8, 1988, the same day Geneva filed the instant motion, Geneva also filed a petition for another variance for five years, with no limitation on development "from the time of issuance." (PCB 88-11, p. 6). Geneva appears also to be seeking, then, a shortening of the time frame of the development limitation by way of its new variance petition, since the 120 day due date for Board decision would fall in early May.

Geneva asserts in its motion that some of the 13 listed developments have "not proceeded to the point where it is necessary that permits be obtained for the extension of water mains". Geneva noted, in particular, that R. R. Donnelley & Co. "will require only a limited number of population served in the next six months." (Geneva motion, p. 4). However, Geneva asserts that two new projects are ready for development and need permits for water main extension:

<u>Development</u>	<u>Est. Population Served</u>
Geneva Knolls	237.0
Hamilton Manor	144.0

(Geneva's motion, p. 4)

Without specification, Geneva states that one of these projects involves a court ordered zoning change pending since 1972.

Geneva also states that other unspecified developments will require permits in late winter or early spring. Geneva asserts "that the total of these projects, together with the projects listed in the original thirteen, will approach the calculated values listed above for the population served" (Geneva motion, p. 4).

#### Agency Response

The Agency agrees that the total population served should not be increased by the grant of the motion. However, the Agency requests that the Board require Geneva to submit, along with each permit application, an accurate statement of the potential population to be served. The Agency additionally made a special point of noting that 1) its previous position, that this PCB 86-225 variance should have been denied, has not changed, and 2) its response to this motion does not reflect in any way its opinion regarding the new petition for variance, PCB 88-11. (Agency Resp., p. 2,3).

#### Board Response:

The Board declines to accept Geneva's population equivalent strategy; for all practical purposes it effectively removes all limitations on development. Even including the development limitations and short time frame, the grant of the existing variance, as the Board earlier stated, "was a very close judgment call" (Board Opinion, PCB 86-225, July 16, 1987, p. 15). In the July 16, 1987 variance, the Board's grant to Geneva of only limited relief from restricted status reflected its belief that much of Geneva's asserted hardship had been self-imposed. The primary focus of concern was the history of Geneva's compliance efforts, and its resistance to committing to a specific compliance option reasonably calculated to achieve compliance by a date certain.

The Board emphasizes that the merits of Geneva's pending variance petition will be addressed only in the variance proceeding. However, the Board recognizes that the new petition does contain a compliance plan, and was filed seven-months earlier (not ten-months as stated by Geneva in its motion) than

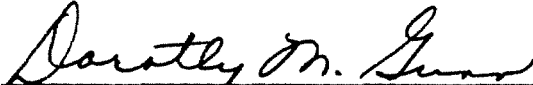
required in the present variance schedule. The Board also notes, on the other hand, that Geneva acknowledges that the compliance schedule was filed early in response to the imposition of the development listing limitation. (Geneva motion, p. 2) In light of these considerations, and in recognition of the fact that Geneva is making some progress, the Board will grant Geneva this much relief: the two projects ready for development, namely Geneva Knolls and Hamilton Manor, may be added to the thirteen developments listed in present variance. The Board emphasizes that this flexibility is not to be construed as implied acquiescence by the Board to any further listing additions prior to its action on the new variance petition.

In summary, on balance, the Board feels that loosening the limitation to include the two developments noted above is warranted.

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 Order was adopted on the 4<sup>th</sup> day of February, 1988, by a vote of 5-2.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board