

ILLINOIS POLLUTION CONTROL BOARD  
August 20, 1987

CITY OF BATAVIA, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 87-79  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

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

This matter comes before the Board on the petition for variance filed by the City of Batavia (City) June 8, 1987 as amended June 19, 1987. In PCB 86-36 (May 22, 1986), the City had been granted a variance until January 1, 1990 from 35 Ill. Adm. Code 602.105 and 35 Ill. Adm. Code 602.106(b) to the extent that those rules involve violation of the 5 pCi/l combined radium-226 and radium-228 standard of 35 Ill. Adm. Code 604.301(a). In this proceeding, the City does not seek extension of the January 1, 1990 deadline for achieving compliance with the radium standard, but instead seeks a one year extension of an interim deadline contained in condition 6 of the PCB 86-36 Order; this condition would have required the City to apply to the Agency, on or before June 22, 1987, for "all permits necessary for construction of installations, changes, or additions to [its] public water supply needed for achieving compliance with the [radium] standard". On August 4, 1987, the Illinois Environmental Protection Agency (Agency) filed its Recommendation that variance be granted. Hearing was waived and none has been held.

The Board will not reproduce its Opinion and Order in PCB 86-36 in its entirety, but will incorporate them by reference herein as if fully set forth. However, repetition of the general description of the City's system and situation is in order:

The City of Batavia is located in Kane County, Illinois. It owns and operates its water distribution system which provides potable water to approximately 13,000 people, including residential, commercial and industrial users. The system consists of four deep wells, ground level and elevated storage tanks, pumps and distribution facilities.

Sampling conducted by USEPA and reported to the Agency showed a radium-226 count of 6.6 pCi/l and a radium-228 count of 4.5 pCi/l for a combined level of 11.1 pCi/l in exceedance, of the 5 pCi/l standard. Batavia was advised of these violations on January 25, 1984 and was placed on the Agency's restricted status list for public water supplies. This status [was] lifted by grant of the variance in PCB 85-11 [April 4, 1985].\*

In the present petition, the City states that there are no more recent radium sampling results currently available, although Argonne Laboratories is presently engaged in testing the City's water. Consistent with condition 4 of the PCB 86-36 variance, the City commissioned HDR Infrastructure to prepare a report evaluating various compliance options. The favored compliance option would involve development of a new supply source to be blended with the existing well sources in the ground storage tanks at Wells No. 2 and 4. Some treatment of the new sources would be required for iron. Depending upon whether the City chooses a) only to remove iron at the new wells or b) to soften water systemwide, respective capital construction costs would be either a) \$3,691,000 or b) \$5,581,000.

The City asserts that, while it continues to be committed to achieving compliance by January 1, 1990, the requirement that it presently file permit applications imposes an arbitrary or unreasonable hardship. The City essentially seeks another year in which to finalize its choice of compliance plans and to prepare engineering reports, and gives four reasons for its request.

First, the compliance report based its evaluation on projected water demand through 2005 of 4,193,000 gpd average daily demand, 5,236,000 gpd peak daily demand, and 6,196,000 gpd peak demand with fire needs; the average daily demand projected is nearly double the current daily demand. To properly blend to meet the radium standard, three new wells must be developed which are capable of producing between 58% and 65% of the system's total needs. Thus, optimal placement of the new wells is important to the success of the blending program. Batavia has a contract with the University of Illinois for a study to determine the maximum development of shallow groundwater resources for Batavia and Geneva. The study, entitled "Shallow Groundwater Resources Assessment in Geneva - Batavia Township," culminates in

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\* The PCB 85-11 variance was from the radium standard itself. As discussed in PCB 86-36, the City had requested that the variance from the standard be terminated and superseded by a variance only from restricted status in response to certain actions by USEPA.

a joint final report to be made to each city on or after June 30, 1988. The City wishes to have the results of this study available for its use in filing permit applications.

Second, the City asserts that it presently lack funds to pay consultants to prepare plans and specifications for construction of facilities to achieve compliance. Batavia received estimates from two consultants of \$30,000 to \$65,000 and \$250,000 to \$300,000, respectively, in consultants' fees. The Agency reports that through House Bill 451, as amended, the Illinois General Assembly has reappropriated \$250,000 from the Build Illinois Bond Fund to the Agency for the fiscal year beginning July 1, 1987 for the planning and construction of water wells in Batavia. House Bill 451 was sent to Gov. James R. Thompson's Office on July 10, 1987 and was signed by Governor Thompson on July 20, 1987. While, the Agency is uncertain of the status of Build Illinois projects at this time, an additional 12 months time would allow for the City to make application for and possibly receive any funds which become available.

Third, the City wishes to consider, as a compliance alternative, a new filtering system for radium removal which was developed by the Iso-Clear Systems Corporation of Yorkville, Illinois. Batavia states that the Iso-Clear System is being tested, with test results being expected in about 6 months. The City wishes to wait for those test results to determine if Iso-Clear is a feasible method of water treatment, given the \$3 million price tag of its currently favored compliance option.

Fourth, the City notes that in response to changes in the Safe Drinking Water Act, the USEPA must revise existing drinking water standards and set standards for additional contaminants. The City's proposed water source complies with all existing and proposed maximum contaminant levels, and the existing source complies with all save that for radium. However, postponement of the required filing for permits would allow the City to take any new regulatory requirements into consideration.

In recommending grant of variance, the Agency does not disagree with the City's assertion that it can achieve compliance by January 1, 1990 even if the extension of the date for permit filing is granted. The Agency has a minor disagreement with only one of the City's various other assertions. Conditions 10 and 11 of the PCB 86-36 variance require the City every three months to notify its users that variance has been granted and of the results of recent sampling. The City alleged that "a notice is mailed every three (3) months to our customers and Mark T. Books at IEPA is copied with a notice. (\$525.00 per mailing for an annual postage bill of \$2,100.00.)"

However, the Agency states that "Agency files show that the last 'Public Notice' regarding Batavia's radium level was

received on or about April 17, 1986. That 'Public Notice' did not contain the language required by Conditions 10 and 11 of Batavia's variance but referred instead to a prior variance granted in PCB 85-11, which is no longer in effect."

Notwithstanding, the Agency recommends that condition 6 of the Order in PCB 86-36 be modified as requested. The Agency does suggest, however, that a specific provision be included that the June 22, 1988 compliance date be met whether or not tests prove the Iso-Clear system to be a feasible compliance alternative.

The Board finds that denial of variance would impose an arbitrary or unreasonable hardship. Given the City's commitment to achieving compliance by the original January 1, 1990 compliance date, the Board continues to find, as it did previously in PCB 86-36 and PCB 85-11, that grant of the proposed modification would pose "minimal threat to the public health".

The City has generally made timely and good faith efforts to comply with the terms of its prior variance and to bring its water supply into compliance with the standard. In so stating, the Board accepts the City's assertion that the required quarterly notices have been sent to its water users, but cautions the city to timely update the content of the notices to reflect the grant of the current variance as well as the recent radium sampling results when completed.

In the interests of clarity, the Board will set forth below the complete text of the variance Order in PCB 86-36 as modified pursuant to the variance from condition 6 granted today. The Agency has suggested that the only modification to the Order needed is replacement of its existing condition 6 with its proposed condition. However, the Agency's proposed condition 6 requires interim reports in December, 1987 and March, 1988. While the Board agrees that such reports should be filed, the requirement conflicts with and/or is duplicative of the requirement in existing conditions 4 and 5 that a compliance report be prepared within 9 months and filed within 10 months. The Board will accordingly delete those conditions.

It is possible that, in so doing, the Board has misperceived the intention of the parties; if so, the Board would invite the parties to file appropriate motions for reconsideration.

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

#### ORDER

- A. The City of Batavia is hereby granted variance from condition 6 of the variance granted in PCB 86-36, May 22, 1986. The

Order, as modified, is set out in its entirety in paragraph B, below.

- B. The City of Batavia is hereby granted by a variance from 35 Ill. Adm. Code 602.105(a), Standards of Issuance, and 602.106(b), Restricted Status, but only as they relate to the 5 pCi/l combined radium standard contained in 35 Ill. Adm. Code 604.301(a).
1. That this variance expires when analysis pursuant to 35 Ill. Code 605.105(a) shows compliance with the radium standard or on or before January 1, 1990, whichever comes first.
  2. In consultation with the Agency, Petitioner shall continue its sampling program to determine as accurately as possible the level of radioactivity in its wells and finished water. Testing for radium 226 and 228 shall be continued.
  3. Petitioner shall continue to have professional assistance (either from present staff or an outside consultant) in investigating compliance options, including the possibility and feasibility of achieving compliance by blending water from its shallow well(s) with that of its deep well(s).
  4. By June 22, 1988, Petitioner shall apply to IEPA, DPWS, Permit Section for all permits necessary for construction of installations, changes or additions to the Petitioner's public water supply needed for achieving compliance with the maximum allowable concentration for the standard in question. The Petitioner shall report to the Agency by December 22, 1987 and March 22, 1988 what steps it has taken and which steps remain for it to meet the above-referenced compliance date. By December 22, 1987 the Petitioner shall secure professional assistance (either from present staff or an outside consultant) to prepare plans and specifications for a water system improvements project. Whether or not test results show that Iso-Clear is a feasible alternative, the Petitioner shall still comply with this June 22, 1988 compliance date.
  5. Within three months after each construction permit is issued by IEPA, DPWS, Petitioner shall advertise for bids for contractors to do the necessary work described in the construction permit and shall accept appropriate bids within a reasonable time.
  6. Construction allowed on said construction permits shall begin within a reasonable time of bids accepted, but in

any case, construction of all installations, changes or additions necessary to achieve compliance with the 5 pCi/l combined radium standard shall begin no later than two and one-half years from the grant of this variance and shall be completed no later than January 1, 1990.

7. Compliance shall be achieved with the 5 pCi/l combined radium standard no later than January 1, 1990.
  8. Pursuant to 35 Ill. Adm. Code 606.201, 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 a written notice to the effect that Petitioner has been granted by the Pollution Control Board a variance from 35 Ill. Adm. 602.105(a) Standards of Issuance and 35 Ill. Adm. Code 602.106(b) Restricted Status, as it relates to the 5 pCi/l combined radium standard.
  9. Pursuant to 35 Ill. Adm. Code 606.201, 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 a written notice to the effect that Petitioner is not in compliance with the 5 pCi/l combined radium standard. The notice shall state the average content of the contaminant in question in samples taken since the last notice period during which samples were taken.
  10. The Petitioner shall take all reasonable measures with its existing equipment to minimize the level of radium in its finished water.
- C. That within forty-five days of the date of this Order, Petitioner shall execute and forward to Jose L. Gonzalez, Jr., Enforcement Programs, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This forty-five day period shall be held in abeyance for any period this matter is being 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 87-79, dated August 20, 1987, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
By: Authorized Agent

\_\_\_\_\_  
Title

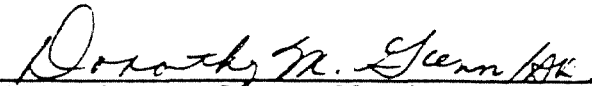
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Date

D. 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. 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 20<sup>th</sup> day of August, 1987, by a vote of 4-2.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board