

ILLINOIS POLLUTION CONTROL BOARD
June 16, 1988

VILLAGE OF ELBURN,)
)
 Petitioner,)
)
 v.) PCB 88-4
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on a May 26, 1988 motion filed by petitioner Village of Elburn. This motion seeks reconsideration of this Board's April 21, 1988 Opinion and Order granting Elburn a nine month variance 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 (combined radium) standard of 35 Ill. Adm. Code 604.301(a). On June 2, 1988, the Board granted the portion of Elburn's motion which sought extension of the time to file a certificate of acceptance of that nine month variance. The Illinois Environmental Protection Agency (Agency) filed its response to the motion for reconsideration on June 10, 1988.

Elburn asks that the Board reconsider its April 21, 1988 decision and grant Elburn a five year variance as originally requested. In support of its motion, Elburn contends that: (1) it is firmly committed to achieving compliance with the combined radium standard within five years; (2) it has remedied several of the Board's concerns including formal retention of an engineering firm; and (3) because of the short duration of the nine month variance, the Agency intends to proceed against Elburn for enforcement of the underlying drinking water standards. Elburn also maintains that in order to continue the nine month variance without a break, it would have to submit a petition for extension of variance 180 days prior to expiration. Elburn points out that the nine month variance requires that Elburn's compliance plan be submitted by the end of that variance. Thus, Elburn states that it would be forced to submit a petition for extension before its compliance plan is completed.

The Agency states that its response is filed not to change its original recommendation (to grant the variance for five years) nor to join in Elburn's motion for reconsideration, but to clarify the record and inform the Board. The Agency submits that

in order to meet USEPA requirements, there must be a final date certain for compliance, or enforcement proceedings must be brought. A date certain can be contained in a variance or in a "Letter of Commitment". The Agency states that Elburn was sent an enforcement letter and a Letter of Commitment in January 1988, but that Elburn failed to sign and return the Letter of Commitment. Thus, the Agency points out that such a letter would meet USEPA requirements.

Without commenting on the option of the Letter of Commitment, the Board will grant the motion for reconsideration in part. The Board will extend the previously granted variance for 120 days, or until May 21, 1989. This will allow Elburn to file any petition for extension of variance after its compliance plan is completed in January 1989. (The Board notes that although Elburn stated that it would have to file a petition for extension 180 days prior to expiration, Section 38(a) of the Environmental Protection Act allows this Board only 120 days in which to take final action on a petition for variance.) However, the Board will deny Elburn's request for a five year variance. Regardless of Elburn's stated intention to comply with the combined radium standard within five years, there is still no commitment to a specific compliance plan. Thus, Elburn's motion for reconsideration is granted in part. The Board rescinds its prior Order of April 21, 1988 in its entirety. The following constitutes the Board's Order in this case.

ORDER

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). The variance is subject to the following conditions:

1. This variance expires on May 21, 1989, or when analysis pursuant to 35 Ill. Adm. Code 605.105(a) shows compliance with the standard for combined radium, which ever occurs first.
2. 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 combined radium. The results of the analyses shall be reported to the Compliance

Assurance Section, Division of Public Water Supplies, 2200 Churchill Road, IEPA, Springfield, Illinois 62794-9276, within 30 days of receipt of each analysis. At the option of Petitioner, 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.

3. By May 21, 1988, Elburn shall secure 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 shallow well(s) with that of its deep well.
4. By June 21, 1988, evidence that such professional assistance has been secured shall be submitted to the Agency's Division of Public Water Supplies, FOS, at 2200 Churchill Road, Springfield, Illinois 62794-9276.
5. By January 21, 1989, Elburn shall complete investigating compliance methods, including those treatment techniques described in the Manual of Treatment Techniques for Meeting the Interim Primary Drinking Water Regulations, USEPA, May 1977, EPA-600/8-77-005, and submit to IEPA, DPWS, a detailed Compliance Report showing how compliance shall be achieved within the shortest practicable time.
6. Failure to meet the deadlines in paragraphs 3, 4 and 5 will result in the automatic termination of the variance.
7. 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, Elburn shall send to each user of its public water supply a written notice to the effect that Elburn 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 standard for the combined radium.
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 Order, 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 standard for combined radium. The notice shall state the average

content of combined radium in samples taken since the last notice period during which samples were taken.

- 9. Until full compliance is reached, Elburn shall take all reasonable measures with its existing equipment to minimize the level of contaminant in question in its finished drinking water.
- 10. Within 45 days after the date of this Opinion and Order Elburn shall execute and send to:

Illinois Environmental Protection Agency
 Attention: Bobella Glatz
 Enforcement Programs
 2200 Churchill Road
 Springfield, Illinois 62794-9276

a certificate of acceptance of this variance by which it agrees to be bound by the terms and conditions contained herein. This variance will 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 88-4, dated June 16, 1988, understand and accept the said Opinion and Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

 Petitioner

 By: Authorized Agent

 Title

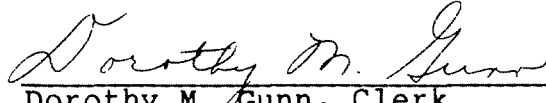
 Date

11. 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 B. Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 16th day of June, 1988, by a vote of 5-2.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board