

ILLINOIS POLLUTION CONTROL BOARD  
December 15, 1988

VILLAGE OF PLAINFIELD )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB 88-134  
 )  
 ) ILLINOIS ENVIRONMENTAL )  
 ) PROTECTION AGENCY, )  
 )  
 ) Respondent. )

MR. JAMES B. HARVEY, ESQ., OF MCKEOWN, FITZGERALD, ZOLLNER, BUCK, SANGMEISTER AND HUTCHISON APPEARED ON BEHALF OF THE PETITIONER.

MS. BOBELLA GLATZ, ESQ., OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by M. Nardulli):

This matter comes before the Board upon an August 23, 1988 petition for extension of variance filed on behalf of the City of Plainfield (hereinafter "Plainfield"). Plainfield is requesting an extension of the variance granted by the Board on April 16, 1987 which granted a variance from 35 Ill. Adm. Code 602.105(a), Standards of Issuance and from 602.106(b), Restricted Status, to the extent those rules relate to 35 Ill. Adm. Code 604.301(a), combined radium-226 and radium-228 concentration and 35 Ill. Adm. Code 604.301(b), gross alpha particle activity. The original variance was granted under Board docket number PCB 87-9. An extension is requested until April 15, 1992.

The Petitioner waived its right to hearing in this matter and consequently no hearing has been held. On October 21, 1988, the Illinois Environmental Protection Agency (hereinafter "Agency") filed a variance recommendation recommending that the requested variance be granted subject to conditions. Based on the record, the Board finds that the request for variance should be granted subject to conditions recommended by the Agency. Compliance with the rule would impose an arbitrary or unreasonable hardship on the Petitioner.

BACKGROUND

Plainfield is an Illinois municipal corporation located in Will County which provides public services including potable water supply for a population of approximately 1,450 residential and 200 commercial and industrial customers. The water supply system includes two deep wells, pumps and distribution facilities. Based on an analysis of the water supply using four samples obtained at quarterly intervals prior to December of 1985, the combined radium-226 and radium-228 content of the water was 9.8 pCi/l, exceeding the 5 pCi/l standard. Gross alpha was 19 pCi/l, exceeding the standard on May 20, 1986. On January 22, 1987, the Petitioner filed its petition for variance in PCB 87-9. A twenty-two month variance was granted by the Board in PCB 87-9 with an expiration date of February 15, 1989. Pursuant to paragraph 1(H) of the Opinion and Order of PCB 87-9, the Petitioner was to file a variance petition on or before October 15, 1988 if compliance was not scheduled to be achieved by February 15, 1989. The present petition is in response to the order.

The Petitioner has fully complied with the conditions in the PCB 87-9 Opinion and Order as follows:

- (a) The petitioner has continued its sampling program pursuant to 1 (B) of the aforementioned Opinion and Order consisting of sampling and analysis beginning with a report dated August 10, 1987 from samples taken June 3, 1987 and ending with samples taken May 23, 1988, and analyzed in a report dated June 30, 1988.
- (b) Petitioner secured professional assistance on June 15, 1987, and notified the Agency on June 17, 1987 pursuant to Sections 1 (C) and 1 (D) of the Opinion and Order.
- (c) Petitioner has completed the investigation of possible compliance methods pursuant to Section 1 (E) of the Opinion and Order.
- (d) Pursuant to Section 1 (F) of the Opinion and Order the "Radium Compliance Report" has been forwarded to the Agency as well as to the Illinois Pollution Control Board.

- (e) Pursuant to Section 1 (H) of the Opinion and Order, Petitioner has filed a variance petition before October 15, 1988.
- (f) Pursuant to Section 1 (I) and 1 (J), Petitioner has sent to each water user a written notice concerning radium standards.
- (g) Petitioner has submitted progress reports, per Section 1 (L), to the Agency and Board. Said reports demonstrated an average gross alpha result, well below the maximum allowable concentration.

#### PETITIONER'S COMPLIANCE PLAN

The Petitioner employed an environmental engineering firm to investigate possible compliance methods. The recommended method of compliance calls for the blending of shallow well water with the deep well water presently used by Plainfield. The estimated total capital cost of this project is \$4,471,000, with an initial capital cost of \$3,065,000. These costs are based on an assumption that a shallow well water supply can be developed with a reasonable number of wells and at locations close to existing water mains. Plainfield must perform a shallow well testing program in order to determine the viability of the proposed compliance method.

Among the alternative compliance plans investigated by the Petitioner was interconnections with other water systems. One such method would be a connection with the City of Joliet to receive Kankakee River water. All of the interconnection proposals were excessively expensive.

#### HARDSHIP AND ENVIRONMENTAL IMPACT

In its petition for variance, Plainfield maintains that compliance with Section 604.301(a) and (b) during the requested period for variance would result in an arbitrary or unreasonable hardship on Plainfield. Without a variance, Plainfield would be under restricted status which would disrupt Plainfield's economic growth which is necessary to finance improvements, including the construction of shallow wells. Plainfield offered the following examples of hardships it would endure without a variance:

- (a) Inability to extend water mains to a

tract of property bordering on the southeasterly boundaries of the village consisting of 56 lots with a yearly anticipated sales tax revenues of \$150,000 and approximately 1.5 million dollars of equalized assessed valuation. The area is presently served by well and septic and annexation agreements are presently underway and being negotiated to accomplish the above.

- (b) Pursuant to a previously executed annexation agreement another developer has proposed a certain residential subdivision entitled River Ridge Estates consisting of 56 residential lots which would require extension of the Petitioner's water mains.
- (c) Pursuant to a previously executed annexation agreement, a proposed 80 residential lot subdivision which has been platted as Lake Side Manor, which would also require water service and main extensions.
- (d) The village has been approached by a developer, for a proposed 28 unit multi-family residential development requiring water extension to the property consisting of approximately 21.82 acres 14.64 of which are proposed to be donated as public park lands.
- (e) The Village has been approached by a developer regarding a proposed 320 acre development to be the site of single family residences and town homes with a density of  $1\frac{1}{2}$  units per acre.
- (f) Community growth is necessary to successfully finance a number of improvements either planned or under way within Plainfield including construction to comply with the radium standard. Relief from restricted status is necessary for this development. In addition, it is necessary for Petitioner to provide long range planning to

ensure that the community growth occurs in a manner which is controlled and in the best long-term interest of its residents. Without relief from restricted status, Plainfield will be unable to sustain community growth, and in turn will be unable to afford and carry out the compliance program necessary to comply with the radium standard at an economical rate that is commensurate with other communities.

Contrasting with the issue of hardships is the issue of environmental impact. In its recommendation, the Agency states that while radiation at any level creates some risk, the risk associated with this level is very low. The maximum allowable concentrations ("MAC") for combined radium and gross alpha particle activity is currently under review at the federal level. However, the Agency does not expect any proposal to change the standard in the near future. The Agency believes an incremental increase in the allowable concentration for the contaminant in question even up to a maximum of four times the MAC for the contaminant in question, should cause no significant health risk for the limited population served by new water main extensions for the time period of this recommended variance.

Therefore, even though a delay in economic development is a hardship of questionable consequence, the lack of concern for environmental impact leads to a conclusion that the imposition of even a slight hardship, for little or no reason, would be arbitrary or unreasonable. However, radium at any level creates some risk and Plainfield's compliance with 35 Ill. Adm. Code 604.301(a) and (b) will significantly reduce the risk to its customers.

#### AGENCY RECOMMENDATION

In its recommendation of October 21, 1988, the Agency recommended that Plainfield be granted a variance from 35 Ill. Adm. Code 602.105(a) and 602.106(b) as they relate to the contaminants in question, subject to the conditions adopted in the Order. The Agency believes that the hardship resulting from denial of the recommended variance from the effect of being on Restricted Status would outweigh the injury of the public from grant of that variance. In light of the cost to the Petitioner treatment of its current water supply, the likelihood of no significant injury to the public from continuation of the present level of the contaminant in question in the Petitioner's water for the limited time period of the variance, and the possibility of compliance with the MAC standard due to blending or new shallow wells, the Agency concludes that denial of a variance

from the effects of Restricted Status would impose an arbitrary or unreasonable hardship upon Petitioner.

The Agency observes that this grant of variance from restricted status should affect only those users who consume water drawn from any newly extended water lines. This variance should not affect the status of the rest of Petitioner's population drawing water from existing water lines, except insofar as the variance, by its conditions, may hasten compliance. Grant of variance may also, in the interim, lessen exposure for that portion of the population which will be consuming more effectively blended water. The Agency emphasized that it continues to place a high priority on compliance with the standards.

#### CONCLUSION

The Board finds that Plainfield would suffer an arbitrary or unreasonable hardship if the requested variance is not granted. Further, the environmental impact of granting the variance is considered to be minimal. Accordingly, the variance will be granted with conditions consistent with this Opinion.

This Opinion constitutes the Board's finding of fact and conclusion of law in this matter.

#### ORDER

Petitioner, Village of Plainfield, is hereby granted extension of its variance granted on April 16, 1987 from 35 Ill. Adm. Code 602.105(a), Standard of Issuance, and from 35 Ill. Adm. Code 602.106(b), Restricted Status, to the extent those rules relate to 35 Ill. Adm. Code 604.301(a), combined radium-226 and radium-228 concentration and 35 Ill. Adm. Code 604.301(b), gross alpha particle activity, subject to the following conditions:

- (A) Compliance shall be achieved with the maximum allowable concentrations by April 15, 1992.
- (B) This variance expires on April 15, 1992 or when analysis pursuant to 35 Ill. Adm. Code 601.104(a) shows compliance with the standard for the contaminants in question, whichever occurs first.
- (C) 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. Until this variance expires, Petitioner shall sample its water from its distribution system at locations approved by the Agency. The Petitioner shall composite the quarterly samples for 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 contaminants in question. The results of the analyses shall be reported to the Compliance Assurance Section, Division of Public Water Supplies, 2200 Churchill Road, Post Office Box 19276, IEPA, Springfield, Illinois 62704-9276, 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.

- (D) By August 15, 1990, Petitioner shall have applied 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.
- (E) Within three months after each construction permit is issued by IEPA, DPWS, the Petitioner shall advertise for bids, to be submitted within 60 days, from contractors to do the necessary work described in the construction permit. The Petitioner shall notify the Agency, DPWS, within 30 days, of each of the following actions: 1) advertisements for bids, 2) names of successful bidders, and 3) whether Petitioner accepted the bids.
- (F) 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 in question shall begin no later than April 15, 1991 and shall be completed on April 15, 1992.

- (G) 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. Code 602.105(a) Standards of Issuance and 35 Ill. Adm. Code 602.106(b) Restricted Status, as it relates to the MAC standard in question.
- (H) 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 standard in question. 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.
- (I) Until full compliance is reached, Petitioner shall take all reasonable measures with its existing equipment to minimize the level of contaminant in question in its finished drinking water.
- (J) The Petitioner shall provide written progress reports to IEPA, DPWS, FOS every six months concerning steps



taken to comply with paragraphs D, E, F and I. Progress reports shall quote each of said paragraphs and immediately below each paragraph state what steps have been taken to comply with each paragraph.

- (K) That within forty-five days of the grant of the variance, Petitioner shall execute and forward to Bobella Glats, Enforcement Programs, Illinois Environmental Protection Agency, 2200 Churchill Road, Post Office Box 19276, Springfield, Illinois 62794-9276, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of the granted variance. This forty-five (45) day period shall be held in abeyance for any period during which this matter is being appealed. If the Petitioner fails to execute and forward the agreement within a forty-five (45) day period, the variance shall be void. The form of Certification shall be as follows:

CERTIFICATION

I, We, \_\_\_\_\_, hereby accept and agree to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 88-134, December 15, 1988.

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Authorized Agent

\_\_\_\_\_  
Title

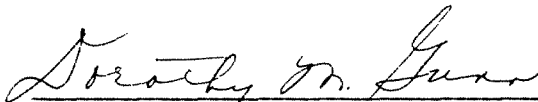
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Date

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987 ch. 111<sup>1</sup>/<sub>2</sub> 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 15<sup>th</sup> day of December, 1988, by a vote of 5-2.



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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board