

ILLINOIS POLLUTION CONTROL BOARD
June 30, 1988

VILLAGE OF CAROL STREAM,)
)
 Petitioner,)
)
 v.) PCB 85-209
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by R. C. Flemal):

On February 4, 1988 the Board ordered the parties to provide the Board with a status report on this matter, "including a statement by Petitioner whether it desires to pursue its requested variance and the submission of a timely-filed recommendation if the variance is to be pursued". The Petitioner's only response was a February 5, 1988 filing of an amended notice of waiver of the decision deadline with a statement of intent to supplement the record. The February 5 filing is identical in form and content to the amended notice of waiver filed June 26, 1987, save for the dates contained therein. No supplemental information has been filed and the Respondent has not filed its Recommendation of which the last due date of May 31, 1988 has now passed.

The Board notes that there have been no less than seven waivers of the decision deadline in this proceeding with no substantive information filed, except for the original petition filed December 20, 1985 and an amended petition filed May 21, 1987. Hearing on the petition has been waived by the Petitioner.

The Board finds that the lack of diligence to pursue this matter has produced a stale record and is of itself sufficient grounds for dismissal of this petition or for denial of the requested relief. The Board has previously stated that:

The moving party in a variance proceeding has the burden to prove by a preponderance of the evidence that they are presently entitled to the relief they request. If they fail in that burden because the evidence is stale the remedy is ... to deny the requested relief. (Emphasis in original) Modine Manufacturing Company v. Illinois Environmental Protection Agency, 69 PCB 377 (Board Order, May 9, 1986).

Additionally, on closer review of the Petitioner's amended petition, the Board further finds that the relief which the Petitioner is now requesting is of a speculative nature and not of the kind which the Board is empowered to grant under the Environmental Protection Act ("Act"). The Petitioner is now seeking variance from the 1.0 mg/l barium standard of 35 Ill. Adm Code 604.202 (formerly Rule 304(B)(4) of Ch. 6: Public Water Supply Rules and Regulations of the Illinois Pollution Control Board), for emergency use of Well No. 5 only. In paragraph two of the amended petition, the Petitioner states that it does not regularly use Well No. 5 and would only need to do so during hot, dry summer days when the pressure in the distribution system has fallen to 50 p.s.i. Paragraph six of the amended petition indicates that the Petitioner is not on the Respondent's restrictive status list and that the Petitioner is not currently in violation. The Board is aware of the fact that even this information is now over a year old, and that the Petitioner has not apprised the Board of its current status despite opportunity to do so.

The Board finds that the lack of diligence to pursue this matter in conjunction with the speculative nature of the relief requested warrant dismissal of this petition. The Board therefore dismisses this petition. However, the Board is not precluding the Petitioner from refileing with an adequate presentation of current information and that the relief requested is within the Board's ability to grant.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 30th day of June, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board