

ILLINOIS POLLUTION CONTROL BOARD
June 30, 1988

VILLAGE OF COAL CITY,)	
)	
Petitioner,)	
)	
v.)	PCB 88-83
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

JOHN M. TIRA APPEARED ON BEHALF OF THE PETITIONER.

BOBELLA GLATZ APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board on a Petition for Variance filed by the Village of Coal City (Coal City) on May 5, 1988. Coal City is seeking variance from 35 Ill. Adm. Code 602.105(a) Standards for Issuance, and Section 602.106(b), Restricted Status, only to the extent that those Sections relate to Sections 604.301(a) (Combined Radium 226 and 228) and 604.301(b) (Gross alpha particle activity). On June 8, 1988, the Agency filed its Recommendation in which it recommended that Coal City be granted the requested variance subject to conditions. Since Coal City waived its right to a hearing and no members of the public filed a timely objection to Coal City's Petition, no hearing was held in this matter.

Coal City has a population of 3,700 and is located in Grundy County. It serves this population with a public water supply system that includes shallow and deep wells, 500,000 gallons of water in above ground storage, pumps and distribution facilities. Relevant data concerning the wells are listed below:

<u>Well No.</u>	<u>Depth</u>	<u>Placed In Operation</u>	<u>Gallons Per Minute</u>
3	357	1935	375
4	793	1968	190
5	1,785	1979	625

The Agency placed Coal City on the Restricted Status list on April 5, 1983. Agency analyses indicated in 1983 that the gross alpha particle activity of Coal City's water was 25.7 picocuries per liter (pCi/l). Section 604.301(b) imposes a 15 pCi/l limit for gross alpha particle activity. In addition, in 1984, the Agency data indicated that the water of Coal City had a combined

radium content of 22.6 pCi/l. The combined radium standard, as imposed by Section 604.301(a), is 5 pCi/l. (Ag. Rec., p. 3).

Coal City is seeking a variance so that it may be allowed to extend its public water supply to new developments even though the water exceeds standards for combined radium and gross alpha particle activity. Coal City requests that it be granted a variance for three years.

According to Coal City, it has experienced only minimal growth since 1984. Coal City claims that further developments may only be accomplished through the expansion of the existing water supply system. Coal City's Petition states:

There are several proposals for additional subdivision development that have been made in the past and are currently pending. All of the projects as proposed are contingent on water main extensions and as built will generate substantial increases in assessed valuation and income to the community. With the increased income, the Village will be able to implement other alternatives in developing feasible compliance methods.

In addition, the Village has had to forgo substantial commercial development in the way of retail shopping for residents and surrounding communities. Also, existing retail establishments have had difficulty with their current operations due in part to a declining population. This is due in part to the aging of the residential population residing in existing structures and the fact that new residents cannot be attracted to move to the Village because of the lack of new subdivision development directly related to the inability to extend watermains.

The Village was unable to effectively compete for a new residential retirement home with other communities due to inadequate building sites because of the water problem. The Village's property tax base and retail sales tax base used to fund growth in the Village has been significantly affected by the watermain extension prohibition. This accompanied with the general economic hardships experienced by rural communities has placed an undue burden on the Village of Coal City and its residents.

(Pet., p. 6-7)

On June 10, 1988, Coal City filed a Motion for Expedited Decision in this matter based upon the fact that a developer is currently interested in developing a new subdivision in Coal City. In a Response to the Board's Order of June 16, 1988, which in part granted Coal City's motion, Coal City states that the proposed development would include 23 lots for single family dwellings with a maximum capacity for the subdivision of 66 lots.

Although Petitioner cites a number of alternative methods by which Coal City might achieve compliance, Coal City has not yet selected a compliance method. Coal City states that it has engaged an engineer to study the various compliance methods and that Coal City will choose one method by November 10, 1988. It states that it will implement the selected method and achieve compliance within three years of the grant of variance. (Pet., p. 9, 11-12).

During the variance period, Coal City proposes to reduce the radium and gross alpha content of its water by not drawing water from well No. 5. Well No. 5 would only be used "in case of emergency or fire and depletion of the 400,000 gallon storage tanks or during a catastrophic main break." According to Coal City, such action would require that Coal City decrease its current water consumption rate by approximately 20 percent. Coal City states that "such conservation will be implemented by the installation of water meters and the establishment of usage rates which will discourage waste and the initiation of [a] water conservation public relations campaign." Coal City states that Well No. 5 would not be utilized again until "the final treatment plant is in operation." (Pet. p. 9-10). Since Coal City has not yet selected a compliance method, presumably this means until Coal City is able to achieve compliance and still utilize Well No. 5.

Well No. 5, a deep well, has the highest radium and gross alpha content of Coal City's wells. Data, taken when Well No. 5 was out of commission, indicate a combined radium content of 15.4 pCi/l and a gross alpha particle activity of 17.3 pCi/l for Coal City's water when it draws only from the two shallow wells. (Pet., p. 10).

With regard to the environmental impact that would result if this variance were granted, Coal City asserts that the variance "will not cause any significant harm to the environment or to the people served by potential water main extensions" for the limited time period requested. (Pet., p. 10). The Agency similarly states that the variance "should cause no significant health risk for the limited population served by new water main extensions for the time period of this recommended variance." (Ag. Rec., p. 5). In addition, the Agency asserts that a variance would not change the existing situation as it concerns users of existing water lines except that "the variance by its conditions may

hasten compliance." The Agency also points out that a variance would benefit current users in that the water quality will improve during the variance period because Well No. 5 will not be utilized. (Ag. Rec., p. 9).

On April 11, 1987, Coal City entered into a letter of Commitment (Letter) with the Illinois Environmental Protection Agency. In the Letter, Coal City commits to achieve full compliance with drinking water standards by July 10, 1991. The Letter also provides:

Violation of the terms of this Letter of Commitment shall subject Respondent to enforcement referral by the Agency to the USEPA for the issuance of an Administrative Order or the filing of a federal court complaint, or to the Illinois Attorney General's Office for appropriate enforcement action.

(Pet., Attach. #3)

Evidently, Coal City has made a formal commitment to the Agency to achieve compliance by a date certain. The Board notes that the letter of commitment does not bear upon its determination in this proceeding. Also, the Board notes that it is not bound by any potential enforcement stipulation contained in the letter of commitment (Village of Channahon v. EPA, PCB 88-42, June 30, 1988).

Given all of the circumstances of the instant case, the Board finds that a denial of a variance would constitute an arbitrary or unreasonable hardship. Therefore, the Board will grant Coal City a variance.

However, Coal City has still not committed itself to a specific method for achieving compliance. Coal City will not select a specific method until November 10, 1988, according to Coal City's proposal. The Board believes that Coal City is not entitled to a long term variance, since Coal City does not yet know exactly how it will achieve compliance. It is important to note that Coal City has been on the restricted status list since 1983. The combined radium and gross alpha particle activity content of Coal City's water greatly exceeds the standards set forth by Section 604.301. Coal City states in its Petition that it has not sought a variance prior to the instant request. In addition, since learning in 1983 that it exceeds the standards, Coal City has apparently done virtually nothing in an effort to mitigate or remedy its water problem prior to signing the Letter of Commitment. While the Board is heartened by Coal City's general commitment to achieving compliance, a long-term variance will not be granted absent a commitment to a specific method for achieving compliance. Village of Elburn v. Illinois Environmental Protection Agency, PCB 88-4 (June 16, 1988).

Instead, the Board will grant Coal City variance until March 20, 1989. Coal City will choose a compliance method by November 10, 1988, since the additional time will allow Coal City to Petition for the extension of this variance once a compliance alternative is selected. However, the Board fully expects that Coal City not delay implementation of its chosen compliance method while it pursues a variance extension.

On June 13, 1988, the Agency filed an addendum to its Recommendation which adds another condition to the Agency's proposed variance conditions. The Board accepts this filing. Coal City did not respond to the June 13th submission.

In conclusion, the Board hereby grants Coal City a variance subject to conditions. The conditions to this variance are largely taken from the Agency's Recommendation.

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

ORDER

The Village of Coal City (Coal City) is hereby granted variance from 35 Ill. Adm. Code 602.105(a) Standards of Issuance, and 602.106(b), Restricted Status, but only as those Sections relate to the limitations for combined radium and gross alpha particle activity set forth in Section 604.301, subject to the following conditions:

- 1) This variance expires March 20, 1989, or when analysis pursuant to 35 Ill. Adm. Code 604.301(a) and (b) shows compliance with the standard for the contaminant in question, whichever occurs first.
- 2) In consultation with the Illinois Environmental Protection Agency (Agency), Coal City 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, Coal City shall collect quarterly samples of its water from its distribution system, shall composite 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 contaminant in question. The results of the analyses shall be reported to the Compliance Assurance Section, Division of Public Water Supplies, 2200 Churchill Road, Illinois Environmental Protection Agency, Springfield, IL 62784-9276, within 30 days of receipt of each analysis. At the option of Coal City, 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) On or before November 10, 1988, Coal City 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 the Agency, DPWS, a detailed Compliance Report showing how compliance shall be achieved within the shortest practicable time, but no later than July 10, 1991.
- 4) 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, Coal City will send to each user of its public water supply a written notice to the effect that Coal City 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 maximum allowable concentration (MAC) standard in question.
- 5) 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, Coal City will send to each user of its public water supply a written notice to the effect that Coal City 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.
- 6) Until full compliance is reached, Coal City shall take all reasonable measures with its existing equipment to minimize the level of contaminant in question in its finished drinking water, including but not limited to shutting down Well No. 5, except during emergencies.
- 7) For each and every occasion when Coal City is required by emergency to use its Well No. 5 during the variance period, the following information shall be submitted to the Agency, DPWS, within 10 working days of the date when Well No. 5 was used:
 - A) The date when Well No. 5 was used;
 - B) The reasons for which Well No. 5 was required to be used;
 - C) The volume of water pumped from Well No. 5 and each of the other wells on the date of usage;
 - D) the length of time for which Well No. 5 was in use.

- 8) After Coal City submits its Compliance Report to the IEPA pursuant to paragraph (3), Coal City shall provide written progress reports to the Agency, DPWS, FOS every two months summarizing steps taken to implement the compliance plan set forth by the Compliance Report.
- 9) That within forty-five days of the date of this Order, Coal City shall execute and send to Bobella Glatz, Enforcement Programs, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62794-9276, a Certificate of Acceptance by which Coal City agrees to be bound to all terms and conditions of the granted variance. This variance will be void if Coal City fails to execute and forward the Certificate within the forty five (45) day period. The 45-day period shall be held in abeyance for a period during which this matter is appealed. The form of this Certificate shall be as follows:

Certificate of Acceptance

I, (We) _____, hereby accept and agree to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 88-83, adopted June 30, 1988.

Petitioner

Authorized Agent

Title

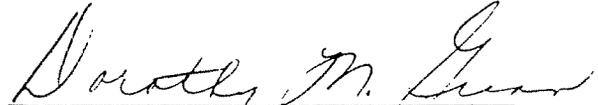
Date

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.

Board Members 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 30th day of June, 1988, by a vote of 5-2.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board