

ILLINOIS POLLUTION CONTROL BOARD
April 21, 1988

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

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

This matter is before the Board on a January 5, 1988 petition for variance filed by the Village of Elburn (Elburn). Elburn seeks a five-year variance from 35 Ill. Adm. Code 602.105(a) "Standards for Issuance" and from 35 Ill. Adm. Code 602.106(b) "Restricted Status", to the extent these rules relate to the 5.0 pCi/l standard for combined radium-226 and radium-228 (combined radium) contained in 35 Ill. Adm. Code 604.301(a). The Illinois Environmental Protection Agency (Agency) filed its recommendation in support of grant of variance, subject to conditions, on March 21, 1988. Hearing was waived, and none has been held.

Elburn is a small community of 1,435 residents located in west central Kane County. The community water system serves 403 residential, 3 industrial, and 38 commercial customers. Elburn owns and operates its distribution system, which includes two deep and one shallow well, one elevated tank, three pumps and one distribution facility. Well 1, which was built in 1905 and is 1,350 feet deep, is still in service as a standby but has not been used in the past five years. Well 2, the shallow well, is 152 feet deep and was put into operation in 1937. Well 3 is 1,395 feet deep and was built in 1975. Elburn does not presently treat its well water. Although no figures are given, Elburn states that the existing shallow well is insufficient to meet the needs of its customers.

In January 1985, the Agency notified Elburn that it had been placed on restricted status because a composite sample showed that the Elburn water supply was in violation of the 5.0 pCi/l combined radium standard. Results of a September 1984 test showed a combined radium level of 12.7 pCi/l. An additional test, done in December 1986, showed a combined radium concentration of 7.2 pCi/l. The Agency states that Elburn has never previously sought any variance from public water supply regulations.

Compliance Plan

Elburn states that it has solicited for professional engineering services to help it achieve compliance, and has received a proposal from Rempe-Sharpe and Associates, Inc. Elburn submits that it "anticipates" entering into a contract with Rempe-Sharpe, and that Rempe-Sharpe will evaluate a number of compliance alternatives, including: (1) removing radium from the existing deep well water; (2) blending of potentially radium-free shallow water with existing deep well water; and (3) utilization of shallow well water as a sole source. Attached to the petition is a compliance schedule prepared by Rempe-Sharpe. The 65 month schedule assumes that Elburn will utilize shallow well water from a new well or wells, either in a blending program or as a sole source of water supply. If the blending option is chosen, the preliminary cost estimate is one million dollars. Elburn contends that under this schedule, it would comply with the combined radium standard at the sixtieth month of the schedule. Although Elburn maintains that it is necessary to carry out this compliance schedule, that statement is qualified in two ways: that the schedule is predicated on Elburn's ability to raise the necessary capital, and that if Rempe-Sharpe recommends an alternative other than use of additional shallow well water, the compliance schedule and the cost estimates would require revisions.

The Agency states that although it has no objection to Elburn's investigation of the use of additional shallow well water as a compliance alternative, it (the Agency) wishes to stress the position that if this alternative proves infeasible, compliance by use of treatment methods must be achieved by the end of the variance period. The Agency also expresses concern over several statements made by Elburn when describing its compliance plan. First, the Agency points out that although the tentative compliance plan is based on a 65 month schedule, no variance may exceed five years, or 60 months. Ill. Rev. Stat. 1965, ch. 111 $\frac{1}{2}$, par. 1036(b). Second, the Agency submits that Elburn's qualified endorsement of the compliance schedule could indicate that Elburn does not intend to comply within 60 months if water treatment methods must be used, as opposed to use of new shallow well water. The Agency insists that it cannot recommend grant of the requested variance if certain compliance cannot be attained within the period of the variance. Finally, the Agency expresses concern about Elburn's statement that the compliance schedule is predicated upon Elburn's ability to raise the capital necessary to carry out the project. The Agency maintains that no compliance plan is presented by Elburn if compliance is based upon ability to raise capital. If no compliance plan is presented, the Agency insists that the Board must deny the requested variance. The Agency contends that the schedule must be met by Elburn, without regard to the ability to raise capital.

Environmental Impact

Elburn does not believe that the granting of the requested variance will have a significant adverse effect on the environment. This belief is based upon the Agency's position on adverse effects in a number of restricted status variance petitions filed before the Board. Elburn also states that it is aware of the Agency's position in R85-14, Proposed Amendments to Public Water Supply Regulations. Finally, Elburn points to "numerous" Board orders granting variances from restricted status to other communities.

The Agency states that while radiation at any level creates some risk, the risk associated with this level is very low. The Agency notes that the maximum allowable concentration for combined radium is currently under review at the federal level, but states that it does not expect any proposal to change the standard in 1988. In sum, the Agency believes that an incremental increase in combined radium should cause no significant health risk for the limited population served by new water main extensions for the time period of the recommended variance.

Hardship

Elburn maintains that the imposition of restricted status has resulted in an arbitrary and unreasonable hardship because development has been adversely impacted, with a resulting loss of revenue for Elburn. Elburn has recently carried out two public projects which it is having trouble paying for. The sewage treatment plant was expanded in December 1980, and a new water tower was completed in October 1986. Elburn states that both of these projects were sized to serve existing commercial and residential customers, as well as anticipated growth. Elburn's principal wastewater generator and employer, Kneip Company, recently closed its meat packing company. (The petition sets out two different dates when the plant closed - April 1985 and April 1986 - so the actual date is not clear.) The plant closing resulted in the loss of 85 jobs and \$135,904 in wastewater treatment revenue, which represents approximately 25% of Elburn's total revenue. Thus, Elburn maintains that additional growth is necessary to provide needed tax revenue and service fee income for both the wastewater treatment plant and the water supply system to compensate for the loss of Kneip. Elburn states that there are presently several developers in various stages of developing property in and around Elburn who want to obtain services, including public water supply, from Elburn. However, the petition does not include the names of the pending developments or the population which would be served by these developments. If Elburn is precluded from extending water service to new customers, Elburn submits that these potential

customers may elect to provide their own water service by drilling private wells. Elburn believes that a proliferation of small wells should be avoided for public health purposes.

The Agency believes that the hardship resulting from denial of the requested variance would outweigh the injury to the public from the grant of the variance. The Agency states that in light of the immediate cost of treatment of the current water supply, the likelihood of no significant injury to the public from continuation of the present level of combined radium for the period of the variance, and the "possibility" of compliance with the combined radium standard through blending or new shallow wells, it concludes that denial of the variance would impose an arbitrary or unreasonable hardship on Elburn.

Conclusions

The Board finds that Elburn would incur an arbitrary or unreasonable hardship if immediate compliance with 35 Ill. Adm. Code 602.105(a) and 602.106(b) was required, and that the hardship outweighs the risk of environmental harm. Elburn was dealt a severe blow by the closing of the Kneip meat packing plant. Not only did Elburn lose 85 jobs and 25% of its revenue, but it is left with a sewage treatment plant sized to accommodate the plant. Without the waste from Kneip, the sewage treatment plant is operating at approximately 25% of capacity with a resulting loss in anticipated revenue. The new customers who may be gained by the suspension of restricted status could help provide some of the revenue needed to pay off the general obligation bonds issued to pay for the new water tower and the expanded sewage treatment plant.

However, the Board shares the Agency's concerns about the compliance plan proposed by Elburn. Elburn has been on restricted status since January 1985, but had not even formally contracted for professional engineering services as of the January 5, 1988 filing of this petition for variance. Therefore, the 65 month compliance schedule submitted is tentative, depending upon the the future recommendation of Rempe-Sharpe. Elburn's "commitment" to the compliance schedule is further qualified by its statement that the schedule is predicated upon its ability to raise the capital necessary to carry out the project. Given the lack of a firm commitment to a compliance option, the Board believes that only a nine month variance is justified. This will allow Elburn to formally secure professional assistance, investigate compliance options, and submit a compliance plan to which it is firmly committed. Additionally, the variance will terminate automatically if the interim deadlines are not met.

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

ORDER

The Village of Elburn (Elburn) is hereby granted a variance from 35 Ill. Adm. Code 602.105a) "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 January 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. Within one month of the grant of the variance, 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. Within two months of the grant of the variance, 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. Failure to meet the deadlines in paragraphs 3 and 4 will result in the automatic termination of the variance.

6. Within nine months of the grant of the variance, 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.
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 April 21, 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 $\frac{1}{2}$, 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 Member s J.D. 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 21st day of April, 1988, by a vote of 5-2.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board