

ILLINOIS POLLUTION CONTROL BOARD
March 9, 1989

CITY OF OTTAWA,)
)
 Petitioner,)
)
 v.) PCB 88-180
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

This matter comes before the Board upon a petition for extension of variance filed by the City of Ottawa (Ottawa) on October 31, 1988, as amended January 11, 1989. Ottawa seeks extension of a variance granted by the Board on March 5, 1987 from 35 Ill. Adm. Code 602.105(a), "Standards for Issuance" and from 35 Ill. Adm. Code 602.106(b), "Restricted Status", as they relate to Ottawa's lack of compliance with the 5 pCi/l combined radium-226 and radium-228 standard contained in 35 Ill. Adm. Code 604.301 for its public water supply. The Illinois Environmental Protection Agency (Agency) filed its Recommendation on December 7, 1988, as amended January 24, 1989 in support of grant of variance. Hearing was waived and none has been held.

The original variance was granted in PCB 86-179. An extension is requested until March 5, 1990. The Agency notes in its Recommendation that one year of sampling, after construction is complete, will be required to demonstrate compliance. Accordingly, for complete relief, variance would be necessary through March 5, 1991.

BACKGROUND

Ottawa, located in LaSalle County, supplies drinking water to a population of 6,000 residential and 500 industrial and commercial utility customers representing approximately 18,000 residents. Ottawa's public water supply system includes three deep wells, storage tanks, pumps and distribution facilities.

Based on an analysis of Ottawa's distribution system using four samples obtained at quarterly intervals prior to October of 1985, the combined radium-226 and radium-228 content of the water was 6.2 pCi/l, exceeding the 5 pCi/l standard. In PCB 86-179, the Board granted Ottawa a two-year variance with an expiration date of March 5, 1989. Pursuant to paragraph 1(J) of the Order,

Ottawa was required to file a variance petition on or before November 5, 1988 if compliance could not be achieved by March 5, 1989. The present petition is in response to that order.

Ottawa asserts that it has complied with the conditions in the PCB 86-179 Opinion and Order as follows:

- (a) Pursuant to Section 1(M) of the Opinion and Order, Ottawa has taken all reasonable measures with its existing equipment to minimize the level of radium in its finished water, including utilizing well no. 11 to the maximum extent possible. As a result, a sample taken from the distribution system on January 21, 1988 indicated combined radium-226 and 228 of 4.1 pCi/l, in compliance with the 10.0 pCi/l limit in Section 1(b) of the Board's Order.
- (b) Ottawa secured professional assistance to investigate alternative solutions for achieving compliance and submitted the resultant study and final compliance plan to the Agency November 7, 1987, pursuant to Sections 1(D), (E) and (F) of the Order.
- (c) Ottawa authorized its consultants to proceed with plans and specifications for the construction of a new deep-water well and investigative measures for the existing wells on January 19, 1988. Ottawa advised the Agency of its progress on April 7, 1988.
- (d) Pursuant to Section 1(J) of the March 5, 1987 Order, Ottawa filed a variance petition before November 5, 1988.
- (e) Pursuant to Section 1(L) Ottawa has sent to each water user a written notice that Ottawa has not been in compliance with the combined radium-226 and 228 standard.
- (f) Ottawa engaged a financial consultant for preparation of a financial statement requisite to the issuance of general obligation bonds to fund the project.

Ottawa employed an engineering firm to investigate various possible compliance methods. These included the construction of several shallow wells or utilization of water from the Fox River

and blending these sources with existing wells. Both of these plans required treatment prior to blending with the existing wells.

A blending alternative was the chosen method. Ottawa proposes to achieve compliance in a two step program - first, construction of a new deep water well and second, investigative and remedial work on wells 8 and 10. Ottawa's estimated cost for this plan is \$819,000. (P. at Attached 6). Ottawa intends to fund the improvement needed to bring it into compliance and the construction of its combined sewer overflow project, by issuing general obligation bonds in the approximate amount of 3.5 million dollars. Ottawa states in its petition that although combining the funding of the projects will result in some savings, the joint funding has caused delays in preparing cost estimates and required documentation. In Ottawa's November 3, 1988 petition, it states that it "appears that bonds will be issued within 60 days." (P. at 3).

HARDSHIP AND ENVIRONMENTAL IMPACT

In its petition for variance, Ottawa maintains that compliance with sections 602.105(a) and 602.106(b) during the requested period for variance would result in an arbitrary or unreasonable hardship on Ottawa. Ottawa asserts that this hardship would be a result of the continuation of the effect of being on Restricted Status which in turn affects Ottawa's taxpayers and prospective developers. Ottawa further maintains that there is no significant risk of environmental harm or risk to the public health during the requested 12 month extension to its variance.

In recommending that Ottawa's variance extension be granted, the Agency states that denial of the extension of this variance from the Standards for Issuance would result in an arbitrary or unreasonable hardship because the Agency would be required to continue to deny construction and operating permits until compliance is achieved. Additionally, the Agency states that "continuation of Restricted Status means that no new water main extensions could be issued permits by the Agency and economic growth, etc., dependent on those water main extensions would not be allowed." (Agency Rec. at 8).

Regarding environmental impact, the Agency believes that granting Ottawa's variance extension "would impose no significant injury on the public or on the environment" for the limited time period requested. (Agency Rec. at 7). In its recommendation, the Agency states that an extension of Ottawa's variance from Restricted Status "should affect only those users who consume water drawn from any newly extended water lines" and should not affect the rest of Ottawa's population "drawing water from existing water lines, except insofar as the variance by its conditions may hasten compliance." (Agency Rec. at 10). The

Agency also believes that in the interim, granting the extension of variance may "lessen exposure for that portion of the population which will be consuming more effectively blended water." (Agency Rec. at 10). Thus, the Agency recommends granting an extension of Ottawa's variance for one year, subject to conditions.

CONCLUSION

The Board finds that Ottawa would suffer an arbitrary or unreasonable hardship if the requested extension of Ottawa's variance is not granted. Further, the environmental impact of granting the variance is considered to be minimal. Accordingly, extension of the variance will be granted until March 5, 1991, with conditions as outlined in the Order below.

The Board notes that although Ottawa has substantially complied with the March 5, 1987 Order, compliance with parts of that Order is somewhat unclear - e.g. application for construction permits and timely submission of written reports. The Board expects that Ottawa will strictly comply with the conditions in the following Order.

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

ORDER

1. Petitioner, the City of Ottawa, is hereby granted extension of its variance granted on March 5, 1987 from 35 Ill. Adm. Code 602.105(a) Standards of Issuance and from 35 Ill. Adm. Code 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), subject to the following conditions:

- (A) This variance expires on March 5, 1991 or when analysis pursuant to 35 Ill. Adm. Code 605.104(a) shows compliance with the combined radium standard, whichever occurs first.
- (B) In consultation with the Agency, Ottawa 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, Ottawa shall sample its water from its distribution system at locations approved by the Agency. Ottawa 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 contaminant in question. 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 Ottawa, 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.

- (C) By May 5, 1989, unless there has been a written extension by the Agency, Ottawa shall apply to IEPA, DPWS, Permit Section, for all permits necessary to construct the new deep water well as described in Petitioner's Amendment to Petition for Variance. Within 4 months of completion of construction of the new deep water well, Ottawa shall apply to IEPA, DPWS, Permit Section for all permits necessary for construction of all other installations, changes or additions to Ottawa's public water supply needed for achieving compliance with the maximum allowable concentration for the standard in question.
- (D) Within 3 months after each construction permit is issued by IEPA, DPWS, Ottawa shall advertise for bids, to be submitted within 60 days, from contractors to do the necessary work described in the construction permit. Ottawa shall accept appropriate bids within a reasonable time. Ottawa shall notify IEPA, DPWS, within 30 days, of each of the following actions: 1) advertisements for bids, 2) names of successful bidders, and 3) whether Ottawa accepted the bids.
- (E) 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 July 5, 1989 and shall be completed no later than March 5, 1990.

- (F) 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, Ottawa shall send to each user of its public water supply a written notice to the effect that Ottawa has been granted a variance from 35 Ill. Adm. Code 602.105(a) Standards of Issuance and 35 Ill. Adm. Code 602.106(b) Restricted Status.
- (G) Pursuant to 35 Ill. Adm. Code 606.201, in its first set of water bills or by June 5, 1989, whichever occurs first, and every three months thereafter, Ottawa will send to each user of its public water supply a written notice to the effect that Ottawa is not in compliance with the combined radium standard. The notice shall state the average content of radium in samples taken since the last notice period during which samples are taken.
- (H) Until full compliance is reached, Ottawa shall take all reasonable measure with its existing equipment to minimize the level of contaminant in question in its finished drinking water, including primary reliance on Well No. 11 so as to minimize radium levels in the water.
- (I) Ottawa shall provide written progress reports to IEPA, DPWS, FOS by April 5, 1989 and every two months thereafter concerning steps taken to comply with the requirements of this Order. Progress reports shall quote each of said paragraphs and immediately below each paragraph state what steps have been taken to comply with each paragraph.

2. Within 45 days of the date of this Order, Ottawa shall execute and forward to Bobella Glatz, Enforcement Programs, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62794-9276, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This forty-five (45) day period shall be held in abeyance for any period 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 88-180, March
9, 1989.

Petitioner

Authorized Agent

Title

Date

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987 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 Opinion and Order was adopted on the 9th day of March, 1989, by a vote of 3-2.


Dorothy M. Gunn, Clerk,
Illinois Pollution Control Board