

ILLINOIS POLLUTION CONTROL BOARD
June 2, 1988

VILLAGE OF ROMEOVILLE,)
)
 Petitioner,)
)
 v.) PCB 87-69
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

By Order of May 19, 1988 the Board granted the Village of Romeoville ("Romeoville") variance from 35 Ill. Adm. Code 602.105(a), Standards for Issuance, and 602.106(b), Restricted Status, as they relate to 35 Ill. Adm. Code 604.301(a), combined radium-226 and radium-228, with grant of same subject to conditions. Today's Opinion supports that Order.

PROCEDURAL HISTORY

Romeoville filed its original Petition for Variance on May 27, 1987, an Amended Petition for Variance on October 26, 1987, and a Second Amended Petition for Variance on March 14, 1988. The latter two documents frame the issues at hand. Hearing has been waived and none has been held.

The Illinois Environmental Protection Agency ("Agency") filed its Recommendation on May 11, 1988, followed by a May 17, 1988 motion to allow filing of the Recommendation instanter; the motion is granted. The Agency recommends that variance be granted, subject to conditions.

On May 12, 1988 Romeoville filed a Motion for Expedited Decision. The motion is granted.

REQUESTED RELIEF

Romeoville provides public services, including potable water supply and distribution, for a population of 4000 residential and 200 industrial and commercial customers. The potable water system is both owned and operated by Romeoville. Raw water is obtained from a system of two deep and three shallow wells.

Illinois regulations provide that public water supplies are prohibited from extending water service, by virtue of not being able to obtain the requisite permits, if their water fails to meet any of the several water quality standards for finished water supplies. These prohibitions exist pursuant to 35 Ill. Adm. Code 602.105 and 602.106, namely:

Section 602.105 Standards for Issuance

- a) The Agency shall not grant any construction or operating permit required by this Part unless the applicant submits adequate proof that the public water supply will be constructed, modified or operated so as not to cause a violation of the Environmental Protection Act (Ill. Rev. Stat. 1981, ch. 111^{1/2}, pars. 1001 et seq.) (Act), or of this Chapter.

Section 602.106 Restricted Status

- a) Restricted status shall be defined by the Agency determination pursuant to Section 39(a) of the Act and Section 602.105, that a public water supply facility may no longer be issued a construction permit without causing a violation of the Act or this Chapter.
- b) The Agency shall publish and make available to the public, at intervals of not more than six months, a comprehensive and up-to-date list of supplies subject to restrictive status and the reasons why.
- c) The Agency shall notify the owners or official custodians of supplies when the supply is initially placed on restricted status by the Agency.

Romeoville was placed on Restricted Status following a December 19, 1985 notification from the Agency that the Romeoville water supply exceeded the 5 pCi/l combined radium standard of 35 Ill. Adm. Code 604.301(a). Namely, analyses of an annual composite of four consecutive quarterly samples or the average of four samples obtained at quarterly intervals showed a radium-226 content of 5.2 pCi/l and a radium-228 content of 1.1 pCi/l, for a combined content of 6.3 pCi/l (Agency Rec. at par. 11).

Notwithstanding results of the earlier analyses, Romeoville contends that recent analyses of water from its distribution system show that the maximum allowable concentration for combined radium is not currently exceeded. This, of itself, however, is

insufficient to allow removal from Restricted Status. Pursuant to 35 Ill. Adm. Code 605.105(a) removal from Restricted Status requires that a demonstration of compliance be made wherein it is shown that the concentration in an annual composite of samples from consecutive quarters or the average of the analyses of four consecutive quarterly samples be less than the 5 pCi/l standard.

Romeoville has not to date obtained either an annual composite or four consecutive quarterly samples by which it can demonstrate compliance. The relief Romeoville requests is to be removed from Restricted Status for the time required to obtain the requisite samples.

SAMPLE RECORD

The record in this matter contains several results of radium analyses of varying degrees of specificity. The most recent are analyses conducted by Teledyne Isotopes on three distribution system samples received from Romeoville in January, 1988 (Second Amended Pet. Attachment). These show radium-226 concentrations of 0.8, 0.9, and 0.4 pCi/l, respectively, and radium-228 concentrations of less than 0.6 pCi/l in all three samples.

Agency records also include three distribution system samples from January 1987 and a fourth from December 1985 (Agency Rec. at par. 16). These show combined radium concentrations of 4.1, 1.5, 1.5, and 1.7 pCi/l, respectively. Agency records also include raw water analyses from one of the deep wells, Well #4, and one of the shallow wells, Well #3. The raw water analyses, both from December 1985, show combined radium concentration of 8.9 pCi/l for the deep well and less than 1.0 pCi/l for the shallow well.

The Board notes that Romeoville in its Second Amended Petition alludes to samples collected during the first and second quarters of 1987. However, no report of the results of these analyses exists within the instant record nor has a record apparently been submitted to the Agency. It is admitted that no sample was taken during the third quarter of 1987 (Motion for Expedited Decision at par. 2).

The Board further notes that Romeoville in its Second Amended Petition and Motion for Expedited Decision requests that it be allowed to average the first, second, and fourth (presumably the Teledyne Isotopes analyses noted above) quarterly samples from 1987 to comprise the missing third quarter sample. In the absence within the record of any report of at least two of these analyses, among other matters, the Board declines to allow this averaging.

COMPLIANCE PLAN

Romeoville intends during the period of variance to collect samples sufficient to make up the required annual composited sample or four quarterly samples. Additionally, Romeoville intends to keep its Well #4 on indefinite shutdown, to which Romeoville attributes the radium problem.

Romeoville has also explored options for maintaining compliance in future years. These include blending, water softening, and construction of new wells. In the long run, Romeoville hopes to be able to utilize surface water derived from the Kankakee River not only for the purpose of assuring compliance with the combined radium standard, but also to "cease using the dwindling supply of ground water and assure our public of an adequate supply of higher quality river water" (Amended Pet. at par. 22).

HARDSHIP AND HEALTH RISK

Absent grant of variance, the Agency would be required to continue to deny construction and operating permits for water main extensions. Romeoville contends that this would constitute an arbitrary or unreasonable hardship, since such action would jeopardize projected economic developments which require water main extensions for completion and use. Romeoville lists ten separate such developments which include single-family housing, corporate, industrial, and educational projects (Motion for Expedited Decision, Attachment).

The Agency concurs that denial of variance under the particular circumstances of the instant matter would constitute an arbitrary or unreasonable hardship (Agency Rec. at par. 20, 21, and 27).

Given that Romeoville is apparently at present delivering water which has a concentration of combined radium below the 5.0 pCi/l health risk level, and given that Romeoville apparently only needs time to demonstrate compliance, there should be no health risk associated with grant of the requested relief. Neither should there be any other environmental impact.

CONCLUSION

Based on the foregoing, the Board finds that Romeoville would, absent grant of variance, incur an arbitrary or unreasonable hardship not justified by the health risk or environmental impact. The Board accordingly grants the request for relief subject to conditions as recommended by the Agency and concurred in by Romeoville (Motion for Expedited Decision at par. 4).

For the purpose of maintaining a unified whole of the Opinion and Order in this matter, the Board here repeats its Order of May 19, 1988 in its entirety:

ORDER

Petitioner, the Village of Romeoville, is hereby granted variance from 35 Ill. Adm. Code 602.105(a), Standards for Issuance, and 602.106(b), Restricted Status, but only as they relate to 35 Ill. Adm. Code 604.301(a), combined radium-226 and radium-228, subject to the following conditions:

- (A) This variance expires nine months from grant of this variance when analysis pursuant to 35 Ill. Adm. Code 605.104(a) shows compliance with the standard for the contaminant in question, whichever occurs first.
- (B) 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 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, 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.
- (C) Petitioner shall take additional water samples from its distribution system within one block of deep Well No. 4 whenever it is used for more than three consecutive days. All analysis reports of the concentration of combined radium-226 and -228 shall be sent to CAS, Division of Public Water Supplies of IEPA, within ten days of receipt and shall indicate they were taken pursuant to this condition of the variance.
- (D) Petitioner shall keep records of the days Well No. 4 is used and quantity of water pumped and provide copies to the Agency upon request.
- (E) Petitioner shall not use Well No. 4 except for emergencies, such as for fighting a fire or because of

mechanical failure of other wells, and only then to the extent water delivered to the distribution system shall not cause a violation of 35 Ill. Adm. Code 604.301(a) on an annual average basis as determined pursuant to 35 Ill. Adm. Code 605.105(a).

- (F) If deep Well No. 4 is used for any reason to provide water to the distribution system during the term of this variance, Petitioner shall report in writing said use and the quantity of water pumped to CAS Division of Public Water Supplies, IEPA within 14 days of each of said uses.
- (G) Petitioner shall initiate design of a replacement source of water or treatment for Well No. 4 within three months of the first time water from Well No. 4 is added to Petitioner's distribution system during the term of this variance. Said design shall be completed within an additional six months. Petitioner shall submit an application for a construction permit for said replacement source or treatment within one month of completion of said design.
- (H) If four consecutive quarterly samples that are taken within one block of Well No. 4 show that 35 Ill. Adm. Code 604.301(a) has been violated, Petitioner shall within three months of that showing advertise for bids and proceed with construction for said replacement source or treatment of Well No. 4. Construction shall be completed within an additional six months.
- (I) Petitioner shall comply all of the publication notification requirements of 35 Ill. Adm. Code Part 606, Subpart B.
- (J) The Petitioner shall continue to have 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 its shallow well(s) with that of its deep well(s).
- (K) 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 on an annual basis.

- (L) 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 on an annual basis. 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.

- (M) Within 45 days of the date of this Order, Petitioner shall execute and forward to Wayne L. Wiemerslage, Enforcement Programs, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62794-9276, a Certification of Acceptance and Agreement to be bound to all terms and conditions of this variance. The 45-day period shall be held in abeyance during any period that this matter is being appealed. Failure to execute and forward the Certificate within 45 days renders this variance void and of no force and effect as a shield against enforcement of rules from which variance was granted. The form of said 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 87-69, May 19, 1988.

Petitioner

Authorized Agent

Title

Date

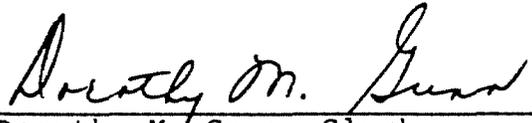
Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985 ch. 111 1/2 par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

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

IT IS SO ORDERED.

Board Member Bill Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 2nd day of June, 1988, by a vote of 6-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board