

ILLINOIS POLLUTION CONTROL BOARD

June 20, 1996

VILLAGE OF LAKE IN THE HILLS,)	
)	
Petitioner,)	
)	
v.)	PCB 95-108
)	(Variance - Public Water Supply)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

This matter is before the Board on a June 4, 1996 Motion for Extension of Time and to Reinstate Variance, filed by Village of Lake in the Hills (Village). The Illinois Environmental Protection Agency (Agency) did not file a response. Village essentially is requesting the Board to reopen a case and to extend the time for execution of a Certificate of Acceptance; the desired result is to “resurrect” the variance granted on July 7, 1995.

Briefly, petitioner first came before the Board with a Petition for Variance from 35 Ill. Adm. Code 602.105(a) “Standards for Issuance” and 35 Ill. Adm. Code 602.106(b) “Restricted Status” to the extent they relate to barium requirements under 35 Ill. Adm. Code 611.301(b). On July 5, 1995 the Board granted the requested variance, subject to certain conditions. (Village of Lake in the Hills v. IEPA (July 7, 1995) PCB 95-108.) The Board’s order clearly directed Village to execute within 45 days a Certificate of Acceptance to the Agency if it deemed the variance acceptable. (Id. at 9.) The order also distinctly stated that “[f]ailure to execute and forward the Certificate within 45 days renders this variance void”. (Id.) Village failed to do so; instead, it submitted an “amended petition for variance” to the Board on September 6, 1995. On September 21, 1995 the Board ordered docket 95-108 closed due to Village’s failure to timely execute a Certificate of Acceptance. The Board also stated that it would not accept an amendment to a petition after the case had been closed and the time for reconsideration had expired. Instead, the Board accepted the “amended petition” as a new petition, and opened docket PCB 96-67. On October 12, 1995 Village filed a Motion for Voluntary Dismissal of its newly filed petition, which the Board granted on October 19, 1995 thereby closing the docket.

Village now explains that after filing the second petition for variance, Stephen Ewart, Deputy Counsel for the Agency, contacted Village and stated that he found no substantive differences between the two petitions, and recommended that Village send an executed Certificate of Acceptance to the Agency. Mr. Ewart acknowledged that the 45-day period had expired, but explained that the Agency would accept the late submission of the executed

Certificate of Acceptance. The Village mailed its certificate to the Agency on September 29, 1995.

Village states that it anticipates water shortages this summer similar to those it experienced last summer. Therefore, it requests that the late submission of its executed Certificate of Acceptance be allowed, and that the Board's July 7, 1995 opinion and order be reinstated.

Aware of citizen anxiety regarding the Village's water supply as reported in local papers, the Board was surprised that Village did not timely submit its Certificate of Acceptance to the Agency, and that it waited until now to address the situation. However, having received no response from the Agency, the Board accepts the explanation of events offered by Village, and supported by affidavit. The motion to extend the time in which a Certificate of Acceptance can be submitted to the Agency is granted. The September 29, 1995 executed Certificate of Acceptance sent by the Village of Lake in the Hills is deemed timely filed, and the variance granted in Village of Lake in the Hills v. IEPA (July 5, 1995) PCB 95-108 is deemed to be in full force and effect.

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 ____ day of _____, 1996, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board