

ILLINOIS POLLUTION CONTROL BOARD
August 15, 1985

CITY OF GENEVA,)
)
 Petitioner,)
)
 vs.) PCB 85-93
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

INTERIM ORDER OF THE BOARD (by R. C. Flemal):

By action of the Board this day pursuant to Section 5.02 of the Illinois Administrative Procedure Act as provided in Ill. Rev. Stat. ch. 111^{1/2} par. 1027(c), the Proposed Amendments to Public Water Supply Regulations (35 Ill. Adm. Code 602.105 and 602.106), docketed as R85-14, have been enacted as an emergency rule. The emergency rule provision was invoked to allow temporary adoption of the provisions of R85-14 pending ultimate and permanent resolution of this matter.

The effect of the Board's immediate action is that for the next 150 days, no community may be denied an Agency permit required for water main extensions for the reason of delivering finished water containing levels of fluoride, combined radium 226 and radium 228, or gross alpha particle activity in excess of the Board's regulations, as long as the delivered water has:

- 1) a fluoride concentration less than or equal to 4 mg/l;
and
- 2) a combined radium 226 and radium 228 concentration less than or equal to 20 pCi/l; and
- 3) gross alpha particle activity (including radium 226 but excluding radon and uranium) concentration less than or equal to 60 pCi/l.

Moreover, any community whose only violations are within the parameters outlined above will not be placed on Restricted Status during the 150 day period. Thus, during this period water main extensions, previously denied under 35 Ill. Adm. Code 602.105 and 602.106 solely because of fluoride, combined radium, or gross alpha violations, singly or in combination and subject to the above limitations, will be permitted. Petitioner requested variance from the Board's combined radium and gross alpha regulations, but the Agency has determined that the level of gross alpha particle activity in Petitioner's water is below the

maximum allowable concentration. Thus Petitioner does not require variance from the gross alpha standard. Regarding combined radium, because Petitioner's delivered water has levels of combined radium 226 and radium 228 greater than 5 pCi/l but less than 20 pCi/l, the Board notes that during the 150 day pendency of the emergency rule Petitioner does not need the variance it has requested.

The Board further notes that if the Proposed Amendments to Public Water Supply Regulations are adopted as a permanent rule Petitioner will have relief identical to its variance request until January 1, 1989, and Board consideration of the requested variance would be duplicitous. Due to the uncertainty regarding the timeframe for final action on R85-14, however, the Board cannot definitively state that the amendments proposed in R85-14 will be promulgated by the end of the 150 day period.

It appears to the Board that in light these considerations, Petitioner has three options respecting its pending variance request. First, Petitioner could move to withdraw its petition. Such withdrawal would be without prejudice, and Petitioner would thereby retain the right to refile the petition at a later date.

Second, Petitioner could elect to waive the time for decision on its pending variance petition, thereby removing the deadline the Board faces regarding issuance of a final decision on the petition. The amount of time waived for decision, if any, is wholly at the discretion of the Petitioner.

Either of these two options would afford Petitioner the opportunity to consider a response appropriate to the ultimate resolution of R85-14, or to such other actions as might bear on Petitioner's need for variance relief.

Finally, Petitioner could choose neither of the options described above and stand by its petition as presently filed with the Board. In that case, the Board will take final action on the petition within the statutory 90 day decision period.

Should Petitioner desire either to move for withdrawal or waive the time for decision, it should do so within 15 days from the date of this Order.

Since the Board's emergency rulemaking action will allow water main extension permits to be issued for the next 150 days to developers operating within Petitioner's community, the Motion for Expedited Decision on Request for Variance filed by Petitioner on August 8, 1985 is hereby denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Interim Order was adopted on the 15th day of August, 1985, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board