

ILLINOIS POLLUTION CONTROL BOARD
July 31, 1986

VILLAGE OF LEMONT,)
)
 Petitioner,)
)
 v.) PCB 86-54
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

MR. JOHN ANTONPOULOS, APPEARED ON BEHALF OF PETITIONER; AND

MR. WAYNE WIEMERSLAGE, APPEARED ON BEHALF OF RESPONDENT.

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

This matter comes before the Board upon an April 23, 1986, Amended Petition for Variance filed on behalf of the Village of Lemont (Village). The Village requests variance for five years from 35 Ill. Adm. Code 602.105(a), Standards for Issuance, and Section 602.106(b), Restricted Status, but only to the extent those rules involve the combined Radium-226 and Radium-228 (combined radium) and the gross alpha particle activity (gross alpha) drinking water standards [Section 604.301(a) and (b)]. The Illinois Environmental Protection Agency (Agency) filed its recommendation on June 6, 1986, advising that variance be granted for one year, subject to conditions. Objections to the granting of variance were filed by Donna Paris on May 5, 1986, and George Podrebarac, Katherine Murphy, James Murphy and Cecilia Kovalic on May 6, 1986. Hearing was held on July 11, 1986, at which members of the public were present.

The Village is a non-home rule municipality located in southwestern Cook County and serves the water needs of approximately 5,300 residents. The Village owns and operates a public water supply distribution system consisting of two deep wells, one shallow well, pumps and distribution facilities. The Village supplies water to all residential, commercial and industrial users (Amended Pet., pp. 3-4).

The Village's deep wells draw water from the Galesville aquifer which contains very high quality groundwater with little or no iron content and no algae or hardness problems, but it does contain naturally occurring radium. (R. 14). The Village has the following number of wells (with their depths and ages):

	<u>Depth</u>	<u>Age</u>	<u>Gallons Per Minute</u>
Well No. 2	172 feet	31 years	400
Well No. 3	1662 feet	17 years	940
Well No. 4	1657 feet	8 years	940

(Amended Pet. p. 4)

The Agency's Public Water Supply Division notified the Village in October, 1984, that its public water supply would be placed on Restricted Status because its water exceeded the maximum allowable concentration for combined radium. The Agency's analysis showed a combined radium content of 18 pCi/l which exceeds the 5 pCi/l standard. Also, the Agency conducted gross alpha tests with the following results (the standard is 15 pCi/l):

	<u>pCi/l</u>
July, 1983	10.6
September, 1983	4.46
December, 1983	24.2
May, 1984	18.7
July, 1984	21.20
October, 1984	17.59
January, 1985	11.0
April, 1985	8.0

(Rec. p. 8)

The Village seeks variance from being placed on Restricted Status. Restricted Status means that a public water supply may no longer be issued a construction permit without causing a violation of the Act or the Board's public water supply regulations. Granting the Village variance from Restricted Status and Standards for Issuance will mean that the Village will no longer be denied construction or operating permits from the Agency because of violations of the drinking water standards for combined radium and gross alpha, and the Village will be removed from the Agency's Restricted Status list. The issue before the Board is whether denying variance will impose an arbitrary or unreasonable hardship on the Village. For the following reasons, the Board finds that the Village has failed to establish that denying variance would impose an arbitrary or unreasonable hardship and, therefore, the Board denies the Village's variance request.

Environmental Impact

The Village has not performed a formal assessment on the environmental impact of granting this variance, but incorporates

the testimony and exhibits presented by Dr. Richard Toohey, Ph.D., and Dr. James Stebbings, Ph.D., both of Argonne National Laboratory, in R85-14, Proposed Amendments to Public Water Regulations, 35 Ill. Adm. Code 602.105 and 602.106 (Amended Pet., p. 10). This testimony is cited for the proposition that granting of the variance will not cause any significant harm to the environment or the people served by the water system for the limited time period of the requested variance. Also, Dr. Toohey testified at the hearing, on behalf of the Village, that there will be no significant health effect due to the granting of this variance. (R. 32).

The Agency contends that while radiation at any level creates some risk, the risk associated with the levels experienced in the Village is very low. The Agency believes that the limited population served by the new water main extensions will experience no significant health risk for the time period of this variance. (Rec. pp. 7-8).

In contrast, Mr. George Podrebarac presented exhibits at hearing which raised questions concerning the above conclusions. Specifically, two articles, one entitled "Drinking Water and Cancer Incidence in Iowa" and another entitled "Association of Leukemia with Radium Groundwater Contamination", were cited for the proposition that granting this variance may expose the people who drink the Village's water to a risk of developing some types of cancers greater than that espoused by Dr. Toohey. (R. pp. 211-215).

The Village's drinking water exceeds the maximum allowable concentration for combined radium and gross alpha; the combined radium standard being exceeded by approximately a factor of four. It appears that there is a health risk in drinking water containing radium levels above 5 pCi/l; the controversy exists over what level of risk is associated with drinking water containing radium above 5 pCi/l. For purposes of this variance, the Board need not reach a conclusion on the environmental impact of granting this variance since the variance is being denied for other reasons.

Hardship

The Board previously granted the Village variance from the gross alpha standard on May 1, 1981 (PCB 80-48), which expired on January 1, 1984. The conditions imposed in this variance required that the Village commence testing its water for combined radium, investigate compliance alternatives and whether landfill sites are available to accept lime softening process waste, submit a compliance plan no later than January 1, 1984, and notify the public of the grant of variance and the average content of gross alpha and combined radium in the Village's water. The Agency contends that the Village has not adequately

complied with its prior variance and, therefore, recommends variance be granted for one year instead of five years. The Agency expressed concern over the lack of compliance, citing that no compliance plan was filed with the Agency by the January 1, 1984, deadline. (Rec. p. 9).

The Board is equally concerned over the Village's lack of compliance with the conditions imposed in the prior variance. Though it appears that the Village has investigated various alternatives to achieve compliance with the gross alpha and combined radium standards and has complied with the notification requirements, the Board cannot condone the Village's dilatory actions to achieve compliance with the gross alpha and combined radium standards. The Village has been cognizant of its water problems since 1979 and has failed to devise a viable compliance plan in nearly seven years. The Board cannot overlook the fact that the Village not only did not submit a compliance plan to the Agency by January 1, 1984, but also has not formulated a compliance plan in the 2-1/2 years since the prior variance expired. What the Village is asking the Board to do is grant it an additional five years to study the problem and achieve compliance with a plan that is both technologically feasible and economically justified. The Board notes that such a compliance plan was required as a condition of the prior variance. Therefore, the Board finds that denying the Village variance would not constitute an arbitrary or unreasonable hardship because any hardship experienced by denying this variance would be largely self-imposed because of the Village's own delay in developing an adequate compliance plan and its lack of compliance with its prior variance.

The Board is cognizant of the fact that a contrary decision was reached on a similar fact scenario in Village of Hampshire v. Illinois Environmental Protection Agency, PCB 85-114. The Hampshire proceeding concerned a variance from the barium drinking water standard which the Board, by a 5-2 vote*, granted for a one-year period. The Board believes that the instant proceeding is distinguishable from the Hampshire proceeding in that the Village of Hampshire, knowledgeable of the impending lapse of its current variance, timely filed for an extension. In contrast, Lemont not only did not timely file for an extension but also waited approximately two years to file a new variance petition. Had Lemont timely filed for another variance, it at that time, could have asserted mitigating factors for non-compliance far more credibly, and most importantly, Lemont would have been two years closer to compliance.

This Opinion constitutes the Board's findings of fact and

*This vote also included two concurrences.

conclusion of law in this matter.

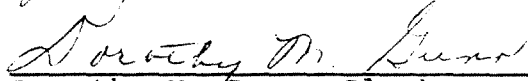
ORDER

The Village of Lemont, Illinois, is hereby denied variance from 35 Ill. Adm. Code 602.105(a), Standards for Issuance, and Section 602.106(b), Restricted Status, to the extent those rules involve combined radium-226 and radium-228 and gross alpha particle activity [Section 604.301(a) and (b)].

IT IS SO ORDERED.

Chairman J.D. Dumelle and Board Members J. Anderson and B. Forcade concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 31st day of July, 1986, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board