

ILLINOIS POLLUTION CONTROL BOARD  
July 19, 1985

CITY OF AURORA, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 85-51  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

SUPPLEMENTAL OPINION AND ORDER OF THE BOARD (by J. Anderson):

By its Opinion and Order of July 11, 1985, the Board granted the City of Aurora (City) a five-year variance from the 5 pCi/l radium standard contained in 35 Ill. Adm. Code 604.301(a). On July 17, 1985, the City filed a motion for expedited ruling, and a motion for modification of the Order to additionally grant the City variance from 35 Ill. Adm. Code 602.105(a), Standards for [Permit] Issuance, and 602.106, Restricted Status. In support thereof, the City asserts that,

A modification of the previously entered Order is needed since the Illinois Environmental Protection Agency (Agency) has advised petitioner that the United States Environmental Protection Agency (USEPA) may take steps to revoke the variance granted on July 11, 1985. The Agency has further advised petitioner that if this action were successful, construction and/or operating permits would again be denied by the Agency. \*\*\* A favorable expedited ruling would allow for the immediate resumption of the issuance of construction permits..."

The City states that the Agency has no objection to its motions.

The City's motions are granted.

The Board notes that in its original ruling it had, as has been the Board's practice, granted variance only from the drinking standard: once variance is granted, the petitioner is "in compliance" with the standard for the life of the variance, making unnecessary any relief from the standard of issuance/restricted status rules which impose "sanctions" for non-compliance. Based on the Board's previous finding that the City had proved that denial of variance would impose an arbitrary or unreasonable hardship, and the City's assertions that the variance as granted may not provide it with complete relief from permitting problems, the Board is making the requested modification solely for the purpose of eliminating any lingering delay or uncertainty. Specifically, the Board emphasizes that

this modification should not be construed as implying any change in the Board's findings and conclusions in its Opinion of July 11, 1985.

The Board must also note that it is not entirely clear from the City's explanation of its problem as to whether the Agency has declined to issue permits since grant of the variance because of the possibility of USEPA action to revoke it, or whether the Agency has merely informed the City that permit denials would be legally required if and when USEPA should revoke the City's variance. It would appear that the latter is the case; the former action would be impermissible, as a Board variance must be given full force and effect until such time as the Board, a court, or USEPA should issue a final order negating it.

The complete text of the variance order as modified is set forth below, to facilitate proper handling by interested parties.

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

#### ORDER

1. Unitl July 1, 1990, Petitioner, the City of Aurora, is granted variance from the 5 pCi/l combined radium standard of 35 Ill. Adm. Code 604.301(a), and from 35 Ill. Adm. Code 602.105(a), Standards of Issuance and 602.106, Restricted Status, as they relate to excursion from the combined radium standard, subject to the following conditions:

- A. On or before October 15, 1985, the Petitioner shall secure professional assistance (from present staff and/or an outside consultant) in investigating compliance options, including a review of the possibility and feasibility of achieving compliance by blending water from alternative water sources with that of its deep wells. On or before November 15, 1985, evidence that such professional assistance has been secured shall be submitted to the Agency's Division of Public Water Supplies, FOS, at 2200 Churchill Road, Springfield, Illinois 62706. This information shall include, but not be limited to, activities described in the City's variance petition of April 15, 1985. More specifically, the City shall
- (i) Continue with its shallow aquifer engineering investigation program.
  - (ii) Beginning with existing shallow well number 101, construct and place on-line new shallow wells in conformance with the data generated by (i), above.

- (iii) In conjunction with the Agency, continue the sampling program to monitor the radium levels in all wells as well as in finished water.
  - (iv) Continue monitoring the activity of the DuPage Water Commission in order to determine the feasibility of Lake Michigan as a water source for the years 1990 and beyond.
- B. As expeditiously after identification of a feasible compliance method as is practicable, but no later than July 1, 1988, Petitioner shall submit a program (with increments of progress) for bringing its system into compliance with radiological quality standards by July 1, 1990. This program should be submitted to the Agency's Division of Public Water Supplies, Permit Section, at 2200 Churchill Road, Springfield, Illinois 62706. The City shall adhere to all timetables contained in this compliance program.
  - C. Until full compliance is reached, the City shall take all measures with its equipment as it from time to time exists to minimize the level of combined radium in its finished drinking water.
  - D. Pursuant to 35 Ill. Adm. Code Section 606.201, in the first set of water bills issued after grant of this variance, the City shall send to each user of its public water supply a written notice to the effect that the City has been granted a variance from the Radium-226 and 228 combined concentration standard. The notice shall state the average concentration of Radium-226 and 228 in samples taken since the last notice period in which samples were taken.

2. Within forty-five days of the date of this Order, the City shall execute and forward to Wayne Wiemerslage, Enforcement Programs, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This forty-five day period shall be held in abeyance for any period this matter is being appealed. The form of this certificate shall be as follows:

