

ILLINOIS POLLUTION CONTROL BOARD  
December 20, 1989

CITY OF GALVA, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 89-131  
 ) (Variance)  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

OPINION AND ORDER OF THE BOARD (by M. Nardulli):

This matter comes before the Board upon a Petition for Variance filed on August 23, 1989 by petitioner City of Galva ("Galva"). Galva seeks a five-year variance from regulations governing the issuance of permits (35 Ill. Adm. Code 602.105(a)) and restricted status (35 Ill. Adm. Code 602.106(b)) insofar as these regulations involve limitations on combined radium levels in public water supplies (35 Ill. Adm. Code 604.301). On November 2, 1989, the Illinois Environmental Protection Agency ("Agency") filed instanter its Recommendation that the variance should be granted subject to certain conditions. Galva waived its right to request a hearing. For the following reasons, the variance is granted.

FACTS

Galva owns and operates a permitted deep well public water supply system in Henry County, Illinois. The public water distribution system includes 2 deep wells, pumps and a distribution facility. (Pet. at par. 12.) A third deep well (No. 5) has been constructed and tested, but is not serviceable. (Id.) An additional elevated storage facility has also been constructed but is not yet in service. (Id.) Galva supplies water to 1240 residential customers and 98 industrial and commercial utility customers employing approximately 1,000 persons. (Pet. at par. 10.) Galva seeks the instant variance so that it may extend its public water supply system. (Pet. at par. 8.)

An analysis of samples of Galva's water showed a radium-226 content of 6.0 pCi/l and a radium-228 content of less than 1 pCi/l. (Agency Rec. at par. 10.) Thus, the combined radium content in Galva's water was 6.0 pCi/l. (Id.) Gross alpha content was 24.2 pCi/l. (Id.) As a result of exceeding the combined radium and gross alpha standards, Galva was placed on restricted status.

### RELIEF REQUESTED

Galva seeks a five-year variance from 35 Ill. Adm. Code 602.105(a) which provides that the Agency shall not grant an operating or construction permit unless the applicant demonstrates that the public water supply system will be constructed, modified or operated so as to not cause a violation of the Illinois Environmental Protection Act ("Act") or Board regulation. Galva seeks a variance from this regulation so that the Agency may not legally deny Galva a permit for its proposed extension even though Galva is in violation of the combined radium standard.

Galva also seeks a variance from 35 Ill. Adm. Code 602.106(b) governing restricted status. The Agency agrees that, if Galva is granted a variance from the regulation governing the issuance of permits, then it should also be removed from the Agency's restricted status list for violating the combined radium standard.

Galva seeks a five-year variance from the above regulations or, alternatively, a variance until analysis pursuant to 35 Ill. Adm. Code 605.104(a) shows compliance with the combined radium standard, whichever occurs first.

### COMPLIANCE PLAN

Galva has installed 126 feet of liner in the recently constructed well No. 5 at a cost of \$35,970. (Pet. at par. 22.) Test pumping has shown a declining concentration of combined radium although the level is still in excess of the maximum allowable concentration ("MAC"). (*Id.*) Galva has been advised that it is possible that continued pumping of well No. 5 may, in time, produce a water quality within the MAC. (*Id.*)

Galva also proposes the construction of a treatment facility to treat all water supplied by well No. 5. (Pet. at par. 22.) Galva is prepared to complete well No. 5 with a submersible pump, design and construct aeration, chlorination and pumping facilities and place the new system in operation. (Pet. at par. 24.) The cost of constructing the new treatment facility would be \$360,000. (Pet. at par. 23.)

Galva sets forth a schedule, including a timetable for securing construction bids and permits, for obtaining compliance. (Pet. at par. 33.) This schedule is based in part upon the projected final promulgation by the USEPA of a revised radium standard no later than December of 1991. (Pet. at pars. 37-40; Agency Rec. Attachment A.)

Galva has considered and rejected both lime softening and ion exchange water softening as viable methods of coming into compliance. (Pet. at pars. 27, 28.)

### HARDSHIP AND ENVIRONMENTAL IMPACT

Galva asserts that immediate compliance with the regulations governing issuance of permits and restricted status, insofar as these regulations involve violations of the combined radium standard, imposes an arbitrary or unreasonable hardship because there is a need for the expansion of the water distribution system in order to serve the domestic needs and fire protection requirements of the local population. (Pet. at par. 42 and attachment C.) Additionally, failure to obtain the variance would prevent the development of homes and businesses thereby preventing economic growth. (Pet. at par. 41.) (Pet. at par. 41.) The Agency agrees that denial of the requested variance would impose an arbitrary or unreasonable hardship upon Galva. (Agency Rec. at pars. 20, 21.)

The parties also agree that any adverse health effects resulting from the requested variance would be minimal. (Pet. at par. 29; Agency Rec. at pars. 13-15.) In support of this assertion, the parties point to testimony elicited in R85-14, Proposed Amendments to Public Water Supply Regulations.

### COMPLIANCE WITH FEDERAL LAW

Both Galva and the Agency state that Galva may be granted a variance from 35 Ill. Adm. Code 102.106(b) consistent with the requirements of the Safe Drinking Water Act (42 U.S.C. § 300(f)) and corresponding regulations because the requested relief is not variance from a national primary drinking water regulation. (Pet. at par. 44; Agency Rec. at par. 23.) Both parties recognize that Galva would still be subject to a possible enforcement action for violating the combined radium standard. (Pet. at par. 47; Agency Rec. at par. 26.) Lastly, the Agency states that USEPA has reconsidered its position that it would object to any such variance extending beyond September 30, 1993. (Agency Rec. at attachment A.) USEPA has recently shown a willingness to accept such variances extending beyond that date where progress is being made toward compliance. (Id.)

### CONCLUSION

The Board finds that Galva has presented adequate proof that immediate compliance with 35 Ill. Adm. Code 602.105(a) and 602.106(b), as those regulations involve the combined radium standard, would impose an arbitrary or unreasonable hardship considering the minimal adverse environmental impact of granting the requested relief. Therefore, the variance is granted subject to those conditions recommended by the Agency.

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

ORDER

Petitioner, City of Galva, is granted a variance from 35 Ill. Adm. Code 602.105(a) and 602.106(b), but only as these regulations related to combined radium, subject to the following conditions:

1. This variance begins December 20, 1989 and expires five years from that date or when analysis pursuant to 35 Ill. Adm. Code 605.104(a) shows compliance with the combined radium standard, whichever occurs first;
2. Until the expiration of this variance, petitioner shall collect quarterly samples of its water from its distribution system, at locations approved by the Agency, to determine the possible level of radioactivity in its wells and finished water. Petitioner shall composite the quarterly samples from each location separately and shall have them analyzed 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 analysis should be reported to the following address within 30 days of receipt of each analysis:

Compliance Assurance Section  
Division of Public Water Supplies  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62794-9276

At petitioner's option, 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.

3. Within three months of the grant of the variance, petitioner shall secure professional assistance (either from present staff or an outside consultant) in investigating compliance options;
4. Within four months of the grant of the variance, evidence that such professional assistance has been secured shall be submitted to:

Illinois Environmental Protection Agency  
Division of Public Water Supplies, FOS  
2200 Churchill Road

P.O. Box 19276  
Springfield, Illinois 62794-9276;

5. Within nine months of the grant of the variance, petitioner shall complete investigating compliance methods, including those treatment techniques described in the Manual of Treatment Techniques for Meeting the Interim Primary Drinking Water Regulations, USEPA, May 1977, EPA-600/8-77-005, and submit to the address listed in condition No. 4 a detailed Compliance Report showing how compliance shall be achieved within the shortest practicable time, but no later than five years from the date of this variance;
6. The Compliance Report referred to in paragraph 5 above shall be submitted within ten months of the grant of the variance to the address listed in condition No. 4;
7. Within 14 months of grant of the variance, unless there has been a written extension by the Agency, petitioner shall apply to IEPA, DPWS, Permit Section, for all permits necessary for construction of installations, changes or additions to the petitioner's public water supply needed for achieving compliance with the maximum allowable concentration for the standard in question;
8. Within three months after each construction permit is issued by IEPA, DPWS, petitioner shall advertise for bids, to be submitted within 60 days, from contractors to do the necessary work described in the construction permit. Petitioner shall accept appropriate bids within a reasonable time. Petitioner shall notify IEPA, DPWS, within 30 days, of each of the following actions: 1) advertisements for bids, 2) names of successful bidders, and 3) whether petitioner accepted the bids;
9. Construction allowed on said construction permits shall begin within a reasonable time of bids being accepted, but in any case, construction of all installations, changes or additions necessary to achieve compliance with the maximum allowable concentration in question shall begin no later than three years from the grant of this variance and shall be completed no later than four years from the grant of this variance;
10. 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 standards in question;

11. 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 standards in question. The notice shall state the average content of the contaminants in question in samples taken since the last notice period during which samples were taken;
12. Until full compliance is reached, petitioner shall take all reasonable measures with its existing equipment to minimize the level of contaminant in question in its finished drinking water;
13. Petitioner shall provide written progress reports to IEPA, DPWS, FOS every six months concerning steps taken to comply with paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12. Progress reports shall quote each of said paragraphs and immediately below each paragraph state what steps have been taken to comply with each paragraph;
14. That within forty-five days of the grant of the variance, petitioner shall execute and forward to:

Bobella Glatz  
Enforcement Programs  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62794-9276.

A certificate of acceptance of this variance by which it agrees to be bound by the terms and conditions contained herein. This variance will be void if the City of Galva fails to execute and forward the certificate within the forty-five day period. The forty-five day period shall be in abeyance for any period during which the matter is appealed. The form of certification shall be as follows:

CERTIFICATION

I, (We) \_\_\_\_\_, having read the Opinion and Order of the Illinois Pollution Control Board in PCB 89-131, dated December 20, 1989, understand and accept the said Opinion and Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Authorized Agent

\_\_\_\_\_  
Title

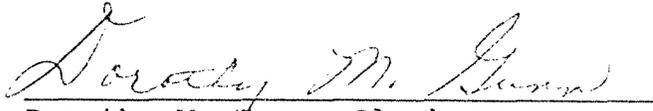
\_\_\_\_\_  
Date

IT IS SO ORDERED.

Board Members J. Dumelle and B. Forcade dissented.

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.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Opinion and Order was adopted on the 20<sup>th</sup> day of December, 1989 by a vote of 5-2.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board