

ILLINOIS POLLUTION CONTROL BOARD  
September 27, 1990

CITY OF BATAVIA,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 89-183
	)	(Variance)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

This matter is before the Board on two motions. On September 10, 1990, the Millview Company and the Old Second National Bank of Aurora as Trustee of Trust 2837 of Aurora, Illinois (collectively Millview) filed a motion for modification of this Board's August 9, 1990 order in this variance proceeding. On September 13, 1990, the City of Batavia (Batavia) filed its motion for reconsideration of that same August 9 order. The Illinois Environmental Protection Agency (Agency) has indicated that it will not file a response.

In essence, both motions ask that the Board reconsider its decision to impose two conditions on its August 9 grant of a variance from restricted status as it relates to combined radium-226 and radium-228. (See 35 Ill. Adm. Code 602.105(a), 602.106(b), and 604.301(a).) Those two conditions are: 1) that only those projects which had been approved by Batavia or received building permits by August 9, 1990 may connect to any extension of water mains under the variance; and 2) that no permits for water main extensions for the covered projects may be issued by the Agency until Batavia actually awards the contracts for construction of the "west side" compliance plan. Batavia and Millview assert that those conditions impose an arbitrary and unreasonable hardship, and ask that the Board remove those conditions.

Initially, the Board notes that there is a question as to whether Millview has standing to bring a motion for modification. Millview was not a party to the underlying variance proceeding, and thus it would be unusual to allow a non-party to request reconsideration of an order to which it was not a party. However, because the Board denies Batavia's motion for reconsideration, and both motions contain basically the same information and requests for relief, the Board will not rule upon the question of Millview's standing to bring a motion for modification.

After reviewing Batavia's motion for reconsideration, the

Board denies the motion. Batavia has not presented any new facts nor pointed to any errors in the Board's August 9 decision to impose the two conditions. The Board carefully considered all circumstances in this case before imposing the conditions, and sees no reason to find that its decision was wrong.<sup>1</sup> Therefore, the motions for modification and reconsideration are denied.

Finally, the Board notes that Exhibit A to Batavia's motion for reconsideration is entitled "List of Approved Developments in Batavia, August 9, 1990", and includes 22 separate projects. Batavia has not asked this Board to "approve" this list, and based upon the information in this record, the Board finds that it cannot make a determination as to whether all properties on the list are covered by the variance. The Agency will make that determination on a case-by-case basis, as permits are applied for.

IT IS SO ORDERED.

R. Flemal dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 1990, by a vote of \_\_\_\_\_.

\_\_\_\_\_  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

<sup>1</sup> The Board is puzzled by Batavia's assertion in its motion that the conditions will make it impossible to provide a new junior high, approved by voters on March 6, 1990, with water in a timely manner. (Batavia's motion at 4.) The new junior high is covered by the variance, and there is no indication in the record that the school will require water before April 1991, when Batavia indicates that it will let the contracts for the west side compliance plan. Therefore, the Board cannot see that the variance conditions adversely impact upon the new school.