

ILLINOIS POLLUTION CONTROL BOARD  
March 30, 1978

VILLAGE OF LYNDON, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 77-304  
 )  
 ENVIRONMENTAL PROTECTION )  
 AGENCY, )  
 )  
 Respondent. )

OPINION AND ORDER OF THE BOARD (by Mr. Dumelle):

Petitioner is requesting a Variance from the drinking water standard for nitrate-nitrogen contained in Rule 304(b) (4) of Chapter 6: Public Water Supplies of the Board's Rules and Regulations. Petitioner's water supply varies from 14 to 18 mg/l of nitrate-nitrogen which is above the Board's twelve-month average standard (10 mg/l) but below the 35 days/year standard (20 mg/l). No compliance plan is proposed which would result in compliance with Board standards. Instead Petitioner proposes to supply bottled nitrate free water to those users who need it through a program of public notification. In its Recommendation the Agency supports Petitioner's proposed compliance plan. The Agency has recommended to the United States government that the Federal Drinking Water standards be also revised to provide for this sort of plan. It should be noted that the present Federal standards which became effective on June 24, 1977 do not allow any alternative solutions such as Petitioner's Proposal. The Board lacks authority to grant relief from the Federal standard.

In Monsanto Company v. Pollution Control Board, 67 Ill. 2d 276, 367N.E.2d 684, 688(1977), the Supreme Court of Illinois stated "...the concept of a Variance which permanently liberates a polluter from the dictates of a Board Regulation is wholly inconsistent with the purposes of the Environmental Protection Act." Although Petitioner might not be accurately characterized as a "polluter", it is in effect asking for permanent relief. If Petitioner's Compliance Program were approved by the Board, we would essentially be allowing Petitioner to rewrite the Board's standards to suit its needs. The Board's drinking water standards were adopted on November 22, 1974 after an analysis of evidence on health effects and economic and technical feasibility. Now, 40 months after the passage of the Board's standards and 9 months after the effective date for compliance with Federal standards, Petitioner is asking the Board to sanction its disregard for these standards.


It seems best to the Board to proceed slowly in matters involving public health especially involving infants and to stand with prior determinations of safe contaminant levels until convinced otherwise in a regulatory proceeding. R77-13 is presently pending before the Board and this unique plan should be presented in that proceeding.

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

ORDER

It is the Order of the Pollution Control Board that Petitioner's request for a Variance from the drinking water standard for nitrate-nitrogen be denied.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 30<sup>th</sup> day of March, 1978 by a vote of 5-0.

  
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Christian L. Moffett  
Illinois Pollution Control Board