

ILLINOIS POLLUTION CONTROL BOARD
November 29, 1988

VILLAGE OF LEMONT,)
)
 Petitioner,)
)
 v.) PCB 86-207
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent,)
)
 and)
)
 CAROLYN F. PLACEK, KATHERINE)
 H. MURPHY AND GEORGE PODREBARAC,)
)
 Intervenor.)

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

This matter is before the Board on a verified motion to modify prior Board order filed by the Village of Lemont on November 21, 1988. Lemont seeks an extension of its prior variance from 35 Ill. Adm. Code 602.105(a) (Standards of Issuance) and 35 Ill. Adm. Code 602.106(b) (Restricted Status), as those sections relate to combined radium and gross alpha particle activity. That variance was granted by Board Order on March 19, 1987, with an expiration date of March 19, 1988. On February 25, 1988, in response to Lemont's motion to modify, the Board extended that variance until September 19, 1988. Lemont now seeks an extension of that variance until January 30, 1990. The Illinois Environmental Protection Agency (Agency) filed its response on November 28, 1988.

In the instant motion, Lemont asks that the variance be extended until January 30, 1990 to allow time for the four quarterly samples necessary to demonstrate compliance pursuant to 35 Ill. Adm. Code 605.105(a). Lemont maintains that it was never notified of the one year of sampling necessary before it could be removed from restricted status, and states that it questions whether the Agency itself was aware of the rule. Lemont contends that it has approved six projects which require watermain extension permits and has spent over half of its annual budget to construct the treatment facility. If the variance is not extended to allow time for sampling, Lemont maintains that it will experience "substantial hardship." The variance extension is also apparently requested because although its treatment

facility is substantially completed, that facility will not be operational until the month of December 1988.

The Agency does not object to Lemont's motion. It does question whether it is appropriate to extend a previously-expired variance by motion, and reserves the right to contest the issue in future cases, but feels that in this particular case the request is reasonable. The Agency notes that because the treatment system will be operational in the very near future and Lemont's customers will then receive treated water, there is little else Lemont can do except perform the required sampling. The Agency does contest Lemont's suggestion that the Agency was not aware of the required one-year sampling period, and points out that Lemont is presumed to have knowledge of this Board rule.

The Board agrees with the Agency that it may not be appropriate in other cases to extend an expired variance by motion. In this case, however, there is little to be gained by penalizing Lemont for failure to request extension before expiration. The treatment facility will soon be operational, thus providing Lemont's customers with treated water. Lemont simply needs time to comply with the sampling requirements. The Board notes that the sampling requirements are clearly set forth in Section 605.105(a) of the Board's rules (35 Ill. Adm. Code 605.105(a)), and that Lemont is presumed to be aware of the Board's rules. Lemont's motion to modify is granted.

ORDER

The Village of Lemont is hereby granted a variance from the provisions of 35 Ill. Adm. Code 602.105(a) (Standards of Issuance), and 602.106(b) (Restricted Status), but only as they relate to combined radium and gross alpha particle activity, subject to the following conditions:

1. This variance expires on January 30, 1990.
2. Petitioner's treatment facility shall be operational and delivering treated water by January 1, 1989.
3. In consultation with the Agency, Petitioner shall continue its sampling program in order to comply with 35 Ill. Adm. Code 605.105(a). Until this variance expires, Petitioner shall collect quarterly samples of its water from its distribution system, shall composite and shall analyze them annually by a laboratory certified by the State of Illinois for radiological analysis so as to determine the concentration of the contaminants in question. The results of the analyses shall be reported to the Water Quality Unit, Division of Public Water Supplies, 2200 Churchill Road, IEPA, Springfield, Illinois 62706, within 30 days of receipt of each

analysis. At the option of Petitioner, 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.

4. Compliance with the maximum allowable concentrations shall be demonstrated as soon as possible, but no later than January 30, 1990.
5. 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 combined radium and gross alpha particle activity.
6. That within 45 days of the date of this Order, Petitioner shall execute and forward to Scott O. Phillips, Enforcement Programs, Illinois Environmental Protection Agency, 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794-9276, a Certificate of Acceptance and Agreement to be bound to all terms and conditions of this variance. This variance will be void if Petitioner fails to execute and forward the certificate within the 45 day period. This 45 day period shall be held in abeyance for any period this matter is appealed.

CERTIFICATION

I, (We), _____, having read the Order of the Illinois Pollution Control Board in PCB 86-207, dated November 29, 1988, understand and accept the said Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

By: Authorized Agent

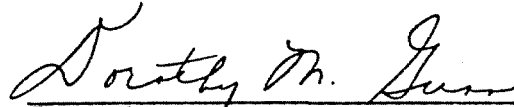
Title

Date

IT IS SO ORDERED.

B. Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 29th day of November, 1988, by a vote of 6-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board