

ILLINOIS POLLUTION CONTROL BOARD
February 8, 1990

VILLAGE OF NORTH AURORA,)
)
 Petitioner,)
)
 v.) PCB 89-66
) (Variance)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board on an Amended Petition for Variance ("Amended Pet.") filed June 30, 1989 by the Village of North Aurora ("North Aurora"). North Aurora seeks extension of variance from 35 Ill. Adm. Code 602.105(a) "Standards For Issuance" and 602.106(b) "Restricted Status" to the extent those rules relate to violation by North Aurora's public water supply of the 5 picocuries per liter ("pCi/l") combined radium-226 and radium-228 standard of 35 Ill. Adm. Code 604.301(a). The variance is requested for a period of five years from the date variance is granted.

Based on the record before it, the Board finds that North Aurora has presented adequate proof that immediate compliance with the Board regulations would impose an arbitrary or unreasonable hardship. Accordingly, the variance will be granted, subject to conditions consistent with this Opinion.

PROCEDURAL HISTORY

On October 15, 1987 in PCB 87-83 the Board granted North Aurora a three-year variance from the same regulations at issue herein¹. On April 14, 1989 North Aurora submitted a Motion to Modify Order of the Board ("Motion to Modify"), in which it requested extension of the PCB 87-83 variance. On April 27, 1987 the Board characterized the Motion to Modify as a Petition for Variance ("Pet."), and ordered North Aurora to amend the filing to conform to the requirements for a petition. The June 30 filing fulfilled this order. North Aurora has waived hearing, and none has been held.

¹ Village of North Aurora v. IEPA, PCB 87-83, 82 PCB 279.

On September 25, 1989 the Illinois Environmental Protection Agency ("Agency") filed a Variance Recommendation ("Recommendation") in support of grant of variance subject to conditions.

On October 3, 1989 and again on October 13, 1989 and October 27, 1989 North Aurora filed Motions for Extension of Time to file a response to the Agency Recommendation. These motions were granted by Board Orders of October 5, October 18, and November 15, 1989, respectively. In each case the motion for extension was based on a new U.S. Environmental Protection Agency ("USEPA") policy on radium variances and the need for evaluation of the new USEPA policy.

On November 29, 1989 the Agency filed an Addendum to its Recommendation wherein it again recommends grant of variance, but with a different term of variance than originally recommended.

On December 14, 1989 North Aurora filed a Motion for Leave to File Response to the Agency's Addendum to Recommendation. That motion was granted by Board Order of December 20, 1989. North Aurora's response was filed on December 29, 1989.

BACKGROUND

North Aurora is a municipality located in Kane County. Among other services, North Aurora provides a potable public water supply derived from four deep wells and supplied through a distribution system which includes two half-million gallon reservoirs, pumps, and distribution facilities; only three of the four well are generally in service. The system provides water to 5,300 residents and 115 industries employing approximately 3,000 people.

North Aurora was first advised of the high radium content in its water supply, and notified of placement on restricted status, by letter from the Agency dated January 8, 1987 (Pet. Attachment 3). The Agency based its determination on an annual composite sample reported on December 8, 1986 which showed a radium-226 content of 4.8 pCi/l and a radium-228 content of 7.6 pCi/l, for a combined value of 12.4 pCi/l (Id. at par. 10).

North Aurora has undertaken several additional analyses. Although these have not been sufficient to show compliance with the radium standard, they nevertheless have failed to confirm the higher combined radium concentration identified in the December 8, 1986 composite. North Aurora reports the following more recent radium analysis, measured in pCi/l:

Distribution

Date	Radium	Well #3		Well #4		Well #5		System	
		226	228	226	228	226	228	226	228
July 1987		3.2	1.4	5.1	2.6	3.1	2.3	3.7	1.5
Oct. 1987		3.9	1.3	4.7	1.8	2.9	1.8	3.9	1.3
Jan. 1988		3.7	1.9	3.7	1.8	1.5	0.8	2.3	1.1
Apr. 1988		4.2	5.1	4.8	4.4	2.9	2.4	4.8	4.4
May 1988		2.7	5.1	3.4	5.2	1.7	3.2	2.0	4.0
May 1988		0.6	1.0	0.6	1.0	1.2	1.0		
July 1988		4.0	3.2	4.6	4.5	2.6	2.6	3.5	3.5
Aug. 1988		3.0	5.0	4.1	5.0	2.0	4.0	3.0	3.2
Oct. 1988		4.3	2.1	6.0	2.8	2.2	0.8	3.3	1.8
Jan. 1989		3.7	2.4	3.6	1.9	2.3	1.8	2.7	2.9
Feb. 1989		3.7	1.9	4.3	2.2	3.0	2.3	3.4	2.3
Mar. 1989		3.4	1.5	4.3	2.4	2.7	1.1	3.0	1.2
Average		3.36	2.65	4.12	2.96	2.15	2.00	3.23	2.47

Motion to Modify, Exhibit 2

REGULATORY FRAMEWORK

In recognition of a variety of possible health effects occasioned by exposure to radioactivity, the U.S. Environmental Protection Agency has promulgated maximum concentration limits for drinking water of 5 pCi/l of combined radium-226 and radium-228. Illinois subsequently adopted the same limit as the maximum allowable concentration under Illinois law.

The action North Aurora requests here is not variance from this maximum allowable concentration. Regardless of the action taken by the Board in the instant matter, this standard will remain applicable to North Aurora. Rather, the action North Aurora requests is the temporary lifting of prohibitions imposed pursuant to 35 Ill. Adm. Code 602.105 and 602.106. In pertinent part these sections read:

Section 602.105 Standards for Issuance

- a) The Agency shall not grant any construction or operating permit required by this Part unless the applicant submits adequate proof that the public water supply will be constructed, modified or operated so as not to cause a violation of the Environmental Protection Act (Ill. Rev. Stat. 1981, ch. 111½, pars. 1001 et seq.) (Act), or of this Chapter.

Section 602.106 Restricted Status

- a) Restricted status shall be defined by the Agency determination pursuant to Section 39(a) of the

Act and Section 602.105, that a public water supply facility may no longer be issued a construction permit without causing a violation of the Act or this Chapter.

- b) The Agency shall publish and make available to the public, at intervals of not more than six months, a comprehensive and up-to-date list of supplies subject to restrictive status and the reasons why.
- c) The Agency shall notify the owners or official custodians of supplies when the supply is initially placed on restricted status by the Agency.

Illinois regulations thus provide that communities are prohibited from extending water service, by virtue of not being able to obtain the requisite permits, if their water fails to meet any of the several standards for finished water supplies. This provision is a feature of Illinois regulations not found in federal law. It is this prohibition which North Aurora requests be lifted. Moreover, as North Aurora properly notes (Amended Pet., Attachment A at par. 44), grant of the requested variance would not absolve North Aurora from compliance with the combined radium standard, nor insulate North Aurora from possible enforcement action brought for violation of this standard.

In consideration of any variance, the Board is required to determine whether the petitioner would suffer an arbitrary or unreasonable hardship if required to comply with the Board's regulations at issue (Ill.Rev.Stat.1987, ch. 111 $\frac{1}{2}$, par. 1035(a)). It is normally not difficult to make a showing that compliance with regulations involves some hardship, since compliance with regulations usually requires some effort and expenditure. However, demonstration of such simple hardship alone is insufficient to allow the Board to find for a petitioner. A petitioner must go further by demonstrating that the hardship resulting from denial of variance would outweigh the injury of the public from a grant of the petition (Caterpillar Tractor Co. v. IPCB (1977), 48 Ill. App. 3d 655, 363 N.E. 2d 419). Only with such showing can hardship rise to the level of arbitrary or unreasonable hardship.

Moreover, a variance by its nature is a temporary reprieve from compliance with the Board's regulations (Monsanto Co. v. IPCB (1977), 67 Ill. 2d 276, 367 N.E.2d 684), and compliance is to be sought regardless of the hardship which the task of eventual compliance presents an individual polluter (Id.). Accordingly, a variance petitioner is required, as a condition to grant of variance, to commit to a plan which is reasonably calculated to achieved compliance within the term of the variance.

HARDSHIP

North Aurora believes that a requirement to come into immediate compliance would impose an arbitrary or unreasonable hardship. North Aurora and the Agency both note that because of North Aurora's inability to receive permits for water main extensions, any economic growth dependent on those water main extensions would not be allowed. North Aurora contends:

Failure to obtain a variance would mean that all construction within Petitioner's service area requiring the extension of the water supply system could not resume. This hurts prospective home purchasers as well as business developers and Petitioner's tax base. (Amended Pet., Attachment A at par. 38).

North Aurora, however, does not currently foresee extending its water mains to serve any particular new users in the immediate future (Id. at par. 13).

North Aurora also asserts that there is great need for expansion of its water distribution system to serve the domestic and fire protection requirements of the local population (Id. at par. 39). North Aurora also contends that, given an anticipated change in the radium standards (see following), with which North Aurora might then be in compliance, substantial expenditure at this time for radium treatment equipment or procurement of water from alternate sources is not in the public interest and does not grant a corresponding benefit to the public (Id. at par. 37; Amended Pet. at 5). Lastly, North Aurora contends that the hardship resulting from denial of the requested variance would outweigh the injury of the public (see below), and thus rises to the level of arbitrary or unreasonable hardship (Id. at par. 40). The Agency agrees that denial of variance would constitute an arbitrary or unreasonable hardship (Recommendation at par. 19).

PUBLIC INJURY

Although North Aurora has not undertaken a formal assessment of the environmental effect of its requested variance, it contends that extension of its watermains will not cause any significant harm to the environment or to the people served by the potential watermain extensions for the limited time period of the requested variance (Amended Pet., Attachment A at par. 28). The Agency contends likewise (Recommendation at par. 18). In support of these contentions, North Aurora and the Agency reference testimony presented by Richard E. Toohy, Ph.D. and James Stebbins, Ph.D., both of Argonne National Laboratory, at the hearing held on July 30 and August 2, 1985 in R85-14,

Proposed Amendments to Public Water Supply Regulations, 35 Ill. Adm. Code at 602.105 and 602.106.

The Agency believes that while radiation at any level creates some risk, the risk associated with North Aurora's water is low (Recommendation at par. 14). In summary, the Agency states:

The Agency believes that the hardship resulting from denial of the recommended variance from the effect of being on Restricted Status would outweigh the injury of the public from grant of that variance. In light of the cost to the Petitioner of treatment of its current water supply, the likelihood of no significant injury to the public from continuation of the present level of the contaminants in question in the Petitioner's water for the limited time period of the variance, and the possibility of compliance with the MAC standard, the Agency concludes that denial of a variance from the effects of Restricted Status would impose an arbitrary or unreasonable hardship upon Petitioner.

The Agency observes that this grant of variance from restricted status should affect only those users who consume water drawn from any newly extended water lines. This variance should not affect the status of the rest of Petitioner's population drawing water from existing water lines, except insofar as the variance by its conditions may hasten compliance. In so saying, the Agency emphasizes that it continues to place a high priority on compliance with the standards.

(Recommendation at par. 26 and 27).

COMPLIANCE PROGRAM

North Aurora proposes at this time to continue to explore compliance alternatives. Among these are purchase of water from the City of Aurora, installation of treatment equipment, and blending. Purchase of water from Aurora is recommended by North Aurora's consultant as preferable to various treatment or blending systems (Amended Pet, Attachment D) if the present 5 pCi/l combined radium standard remains in effect. However, blending is the preferred and least costly method of compliance if the standard is altered to 5 pCi/l for each of the two radium isotopes (Id.), as North Aurora speculates may be the case (see following).

In anticipation of having to choose among these alternatives, North Aurora has been pursuing contract negotiations with Aurora (North Aurora December 30, 1989 Response at 3), as well as revision of the design and engineering of its water treatment system (Id.).

CONSISTENCY WITH FEDERAL LAW

The Agency believes that North Aurora may be granted variance 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 (Recommendation at par. 23).

The Agency further notes that until recently it believed that USEPA might well object to any variance extending beyond September 30, 1993 (Addendum to Recommendation at par. 1). However, USEPA policy, in part occasioned by the anticipated change in the federal combined radium standard (see below), apparently is now such that USEPA does not propose to object to longer variances if a community can demonstrate that it is making good faith, expedient efforts towards compliance and that the community's construction schedule is the most appropriate considering expected promulgation of the new standards (Id.).

ANTICIPATED FEDERAL STANDARD REVISION

The federal standard for radium has been under review for some time. Additionally, in anticipation of a federal revision of the radium standard, the Illinois Environmental Protection Act has been amended at Section 17.6 to provide that any new federal radium standard immediately supersedes the current Illinois standard. Nevertheless, it remains uncertain as to when and how the radium standard will actually be modified.

Both the Agency and North Aurora apparently believe that the most likely schedule is USEPA proposal of a modified standard in July 1990 and promulgation by December 1991. Both the Agency and North Aurora also apparently agree that the modified standard will consist of separate standards for radium-226 and radium-288 at 5 pCi/l each. These suppositions regarding dates and numeric values for the standards are nowhere in the instant record based on definitive statements to this end made by the USEPA. Rather, they are based on conclusions drawn from various documents. In particular, North Aurora points out that in a letter from Joseph F. Harrison, Chief of the USEPA Region 5 Safe Drinking Water Branch, to the Agency, Mr. Harrison found acceptable a compliance schedule applicable to the City of Geneva which is premised on the June 30, 1990 proposal and December 1991 promulgation dates (see Attachment A to North Aurora Response of December 30,

1989). This certainly falls short of a USEPA commitment to propose and promulgate new radium standards by these dates. Similarly, the supposition that the standard which will be proposed will be 5 pCi/l for each of the two radium isotopes is apparently based a statement made by Mr. Harrison at the March 16, 1989 meeting of the Illinois Ground Water Association to this effect (North Aurora Motion to Modify, filed April 14, 1989 at 3), and a newsletter of the USEPA Office of Drinking Water of January 1989 which states that "For each isotope, MCLs under consideration center on 5 pCi/l" (Amended Pet., Attachment C). This record certainly also falls short of confirmation of USEPA intentions regarding the numeric values of the any new radium standards.

Based upon this record, the Board can only conclude that it remains possible, and perhaps even likely, that the USEPA will take action which will cause the applicable radium standard to change.

DETERMINING COMPLIANCE WITH THE RADIUM STANDARD

North Aurora requests that the Board address the satellite issue of whether the radium standard must be met on an average or maximum basis (Response at 5). The issue arises because North Aurora believes, based on its past sampling record, that it may be in compliance with the expected federal radium standards as long as those standards must be met only in the average.

The Board declines, as unjustifiably speculative, to determine whether North Aurora would be in future compliance with the expected federal standards. However, the general issue of averaging as it applies to radium analyses is a matter which does warrant consideration.

The "average" at issue is that found at 35 Ill. Adm. Code 605.105(a):

Compliance with 35 Ill. Adm. Code 604.301 [combined radium standard] shall be based on the analysis of an annual composite of four consecutive quarterly samples or the average of the analyses of four samples obtained at quarterly intervals.

This averaging rule is identical in substance to the averaging rule found in current federal regulations at 40 CFR 141.26(a)(1) (1988).

Section 605.105(a) clearly specifies that compliance with the combined radium standard requires a showing based on samples averaged over a year. The question North Aurora raises is whether a showing of violation similarly requires samples averaged over a year.

Where averaging is provided for by law, and where there is no standard which applies to a single sample, a violation cannot be found unless it is the appropriate average (not a single sample result) which is exceeded. That is the circumstance here. Thus, a showing of violation of the combined radium standard of 35 Ill. Adm. Code 604.301(a) must be based on the analysis of an annual composite of four consecutive quarterly samples or the average of the analyses of four samples obtained at quarterly intervals. A similar conclusion also applies to the standard for gross alpha particle activity at 35 Ill. Adm. Code 604.301(b), which is also subject to the averaging rule of 35 Ill. Adm. Code 605.105(a). This finding was articulated with respect to the radium/gross alpha standards at least as long ago as Village of Wheeling v. IEPA, PCB 80-59, 39 PCB 53 and City of Rolling Meadows v. IEPA, PCB 80-70, 39 PCB 62.

In part the instant question has arisen based on a statement in the Board's March 24, 1988 Opinion in Citizens Utilities Company of Illinois v. IEPA ("Citizens Utilities II"), PCB 86-185, 87 PCB 155. The Board has long held that it does not grant variance where variance is not necessary, and variance is normally not necessary where there is no showing of violation of the standard from which variance is sought (e.g., City of White Hall v. IEPA, PCB 84-126, 61 PCB 203; The Village of Elk Grove Village IEPA, PCB 84-158, 62 PCB 295; City of West Chicago v. IEPA, PCB 85-2 64 PCB 249; Village of Minooka v. IEPA, PCB 85-100, 65 PCB 527; City of Spring Valley v. IEPA, PCB 88-181, Slip Op., January 5, 1989).

However, the Board has in a number of circumstances granted variance, particularly in the radium/gross alpha situation, where results from single samples or fewer than the number of samples required pursuant to 35 Ill. Adm. Code 605.105(a) showed excess readings. Such circumstance might be, for example, where there are insufficient samples to confirm a violation under the averaging rule, but where: (1) there is reasonable grounds to expect that further sampling would confirm the violation, and (2) immediate grant of variance would expedite correction of the expected violation (e.g., City of Chenoa v. IEPA, PCB 89-139, Slip Op., January 11, 1990). Moreover, the Board early in its history of review of radium/gross alpha variance petitions granted certain variances from the radium/gross alpha standards (as opposed to the Restricted Status and Standards For Issuance matters of the instant case) where: (1) violation pursuant to the averaging rule had not been shown, and (2) petitioner had demonstrated a need for variance before the Agency would issue construction permits (e.g., Village of Wheeling, supra; City of Rolling Meadows, supra; Village of Lemont v. IEPA, PCB 80-48, 41 PCB 315; Citizens Utilities Company of Illinois v. IEPA ("Citizens Utilities I"), PCB 82-63, 47 PCB 501).

It was in the latter circumstance that the Board found in Citizens Utilities I that variance was warranted, even though no violation of the radium standard had been shown. In Citizens Utilities II the Board was recapitulating the earlier history associated with Citizens Utilities I. Citizens Utilities II was never intended to stand for the proposition that combined radium violations may be enforced based on less than the sampling requirements of 35 Ill. Code 604.105(a)².

As a last matter, the Board notes that the above analysis is based on the averaging rule for combined radium and gross alpha particle activity found in present Illinois and federal law. As has also been noted, the federal law is currently under review and any new federal law will automatically become Illinois law upon federal adoption. Thus, the above analysis may have to be modified to conform to changes at the federal level.

TERM OF VARIANCE

The only matter contested between North Aurora and the Agency is the term of variance. North Aurora requests that the term be five years. The Agency recommends a short-term variance that expires in March 1991. The Agency notes:

Because North Aurora is very uncertain of its mode of compliance, whether purchase of water, treatment, or whether compliance will be achieved immediately upon passage of the new standards, the Agency believes that the compliance method should be more specifically stated in a future Petition for Variance. (Addendum to Recommendation at par. 3).

The Board is in agreement with the Agency to the extent that the Board believes that North Aurora's compliance circumstances should be reevaluated in the future. However, the Board finds no merit in requiring this reevaluation prior to there being clearer indication of the direction of the expected new federal radium regulations. In light of North Aurora's recent sampling record (see above), there is reasonable grounds to believe that North Aurora's most suitable compliance program (or arguably whether any compliance program at all will be necessary) hinges on the exact nature of the federal action. Thus, reevaluation following federal promulgation is appropriate. Moreover, given USEPA's poor track record for promulgating regulations on the date they

² Although variance was granted in Citizens Utilities II, that variance was subsequently vacated on grounds unrelated to the averaging issue (see Citizens Utilities of Illinois v. IEPA, PCB 86-185, 89 PCB 233).

are "anticipated", the Board is reluctant to specify a date certain upon which North Aurora's reevaluation must be made. The Board does not want to be placed, nor to place North Aurora or the Agency, in a position where the instant action has to be repeated solely because dates outside of any of our control have not been met. The Board believes that the proper resolution of this issue is to have the termination date of the variance be conditional based on the actual date of federal promulgation of revised radium standards. Moreover, the Board believes that a one-year period following federal promulgation provides an sufficient time period within which North Aurora can determine its appropriate course of action, including any necessary compliance program, and present that course of action to the Board for review, if necessary.

Similarly, the Board does not believe that a full five years of variance is warranted. Should there be no federal action within the next two-and-a-half to three years, the Board believes that reevaluation is necessary in light of that circumstance. Accordingly, the Board will grant variance to the earlier of: (a) September 30, 1993, (b) one year following promulgation of any federal radium regulations which supersede the Board's current radium regulations, and (c) attainment of compliance by North Aurora of any radium standard then in force. The September 30, 1993 date is based upon North Aurora knowing whether USEPA will or will not proceed with promulgation of a new radium standard by September 30, 1992, and the allowance of a year thereafter for North Aurora to come into compliance.

CONCLUSION

The Board finds that, in light of all the facts and circumstances of this case, denial of variance would impose an arbitrary or unreasonable hardship upon Petitioner. The Board also agrees with the parties that no significant health risk will be incurred by persons who are served by any new water main extensions, assuming that compliance is timely forthcoming. The Board will accordingly grant variance consistent with this Opinion.

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

ORDER

Petitioner, the Village of North Aurora, is hereby granted variance from 35 Ill. Adm. Code 602.105(a), Standards of Issuance, and 602.106(b), Restricted Status, but only as they relate to the 5 pCi/l combined radium-226 and radium-228 standard of 35 Ill. Adm. Code 604.301(a), subject to the following conditions:

- (1) This variance shall terminate on the earliest of the following dates:
 - (a) September 30, 1993;
 - (b) One year following the effective date of any regulation promulgated by the United States Environmental Protection Agency ("USEPA") which amends the maximum concentration level ("MCL") for combined radium, either of the isotopes of radium, or the method by which compliance with a radium MCL is demonstrated; or
 - (c) When analyses pursuant to 35 Ill. Adm. Code 605.104(a) show compliance with the combined radium standard.
- (2) Compliance shall be achieved with the maximum allowable concentration of radium then in force no later than September 30, 1993 or no later than one year after the date on which USEPA amends the MCL for radium, whichever occurs first.
- (3) In consultation with the Illinois Environmental Protection Agency ("Agency"), Petitioner shall continue its sampling program to determine as accurately as possible the level of radioactivity in its wells and finished water. Until this variance terminates, Petitioner shall collect quarterly samples of its water from its distribution system at locations approved by the Agency. Petitioner shall composite the quarterly samples for 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 two parameters, radium-226 and radium-228. At the option of Petitioner the quarterly samples may be analyzed when collected. The results of the analyses shall be reported within 30 days of receipt of the most recent sample to:

Illinois Environmental Protection Agency
Compliance Assurance Section
Division of Public Water Supplies
P.O. Box 19276
2200 Churchill Road
Springfield, Illinois 62794-9276
- (4) Within three months after USEPA amends the MCL for radium or no later than September 30, 1992 Petitioner shall submit to the Agency a detailed Compliance Report showing how compliance will be achieved by September 30,

1993 or one year after the date on which USEPA amends the MCL for radium, whichever occurs first. The Compliance Report shall be submitted to:

Illinois Environmental Protection Agency
Division of Public Water Supply
Field Operations Section
2200 Churchill Road
Springfield, Illinois 62708

- (5) Within three months of the submission of the Compliance Report, unless there has been a written extension by the Agency, Petitioner shall submit applications for all permits necessary for construction of installations, changes, or additions to Petitioner's public water supply needed for achieving compliance with the maximum allowable concentration for the combined radium standard. Such applications shall be made to:

Illinois Environmental Protection Agency
Division of Public Water Supply
Permit Section
2200 Churchill Road
Springfield, Illinois 62708

- (6) Within three months after each construction permit is issued by the Agency, 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 the Agency at the address in condition (5) of each of the following actions: 1) advertisement for bids, 2) names of successful bidders, and 3) whether Petitioner accepted the bids.
- (7) 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 of combined radium shall begin no later than eighteen months prior to the date of termination of the variance and shall end not later than ten months prior to the date of termination of the variance.
- (8) 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 shall 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 they relate to the combined radium-226 and radium-228 standard. This notice shall comport with the notice schedule followed pursuant to the variance granted in PCB 87-83.

- (9) 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 shall send to each user of its public water supply a written notice to the effect that Petitioner is not in compliance with the combined radium-226 and radium-228 standard. The notice shall state the average content of the contaminant in question in samples taken since the last notice period during which samples were taken.
- (10) Until full compliance is achieved, Petitioner shall take all reasonable measures with its existing equipment to minimize the level of combined radium in its finished drinking water.
- (11) Petitioner shall provide written progress reports to the Agency at the address in condition (3) every six months concerning steps taken to comply with this Order. Progress reports shall quote each of said paragraphs and immediately below each paragraph state what steps have been taken to comply with each paragraph.

Within 45 days of the date of this Order, Petitioner shall execute and forward to Bobella Glatz, Enforcement Programs, Illinois Environmental Protection Agency, 2200 Churchill Road, Post Office Box 19276, Springfield, Illinois 62794-9276, a Certification of Acceptance and Agreement to be bound to all terms and conditions of this variance. The 45-day period shall be held in abeyance during any period that this matter is being appealed. Failure to execute and forward the Certificate within 45 days renders this variance void and of no force and effect as a shield against enforcement of rules from which variance was granted. The form of said Certification shall be as follows:

CERTIFICATION

I (We), _____, hereby accept and agree to be bound by all terms and conditions of the Order of the Pollution Control Board in PCB 89-66, February 8, 1990.

Petitioner

Authorized Agent

Title

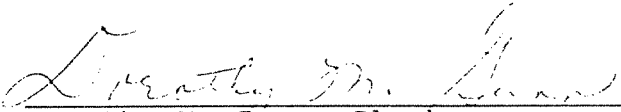
Date

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987 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.

IT IS SO ORDERED.

Board Members Jacob D. Dumelle, Bill S. Forcade, and Michael L. Nardulli dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 17th day of February, 1990, by a vote of 4-3.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board