

ILLINOIS POLLUTION CONTROL BOARD  
March 2, 2000

VILLAGE OF WHITE CITY, )  
)  
Petitioner, )  
)  
v. ) PCB 00-68  
) (Variance - Water)  
ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )  
)  
Respondent. )  
)  
OPINION AND ORDER OF THE BOARD (by E.Z. Kezelis):

This matter is before the Board on a January 14, 2000 second amended variance petition filed by the Village of White City (White City).<sup>1</sup> White City seeks relief for its water supply distribution system from 35 Ill. Adm. Code 602.106(a) "Restricted Status" for total trihalomethanes (TTHM), for a period of time up to December 31, 2002, or until such time as analysis pursuant to 35 Ill. Adm. Code 605.104(a) shows compliance, whichever occurs first. White City waived hearing and no hearing was held.

The Board's responsibility in this matter arises from the Illinois Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (1998)). The Board is responsible for granting variances from Board regulations whenever it is found that compliance with the regulations would impose an arbitrary or unreasonable hardship upon a petitioner. See 415 ILCS 5/35(a) (1998). The Illinois Environmental Protection Agency (Agency) is required to investigate each variance petition and make a recommendation to the Board for the disposition of the petition. See 415 ILCS 5/37(a) (1998).

The Agency filed its recommendation on December 9, 1999 (Ag. Rec.). White City has not responded to the recommendation. In it, the Agency recommends that a variance from both 35 Ill. Adm. Code 602.106 "Restricted Status" and from 35 Ill. Adm. Code 602.105(a) "Standards for Issuance" be granted. The Agency recommends, however, that the variance be granted for a period of only twelve months and that it be subject to certain conditions as discussed more fully below.

BACKGROUND

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<sup>1</sup> The second amended variance petition, which was filed on January 14, 2000, amends the December 1, 1999 first amended petition by incorporating by reference the entire original petition (Pet.) which was filed on October 8, 1999. White City's motion for leave to so amend is hereby granted.

White City is located in Macoupin County, Illinois. White City provides potable water to a population of approximately 229 persons, including residential, commercial, and industrial users. Pet. at 5. White City owns and operates its own distribution system, but purchases its water from the City of Mount Olive (Mount Olive) public water supply. Ag. Rec. at 4. Water is provided to all residential, commercial, and industrial users as needed and charges, as established by ordinance, are imposed on all users. Ag. Rec. at 5. White City is not part of a regional public water supply. Ag. Rec. at 5.

The Agency first advised White City that its water exceeded the maximum contaminant level (MCL) for TTHM on October 25, 1996. Ag. Rec. at 5.<sup>2</sup> After receiving this notification, White City contacted Mount Olive, its potable water supplier. Ag. Rec. at 7. At that time, Mount Olive was unable to reduce the TTHM concentration in its water. Ag. Rec. at 7. Since then however, Mount Olive has constructed an ammonia feeder, which will allow it to reduce the concentration of TTHM in its water to such a level so as to bring White City's water into compliance with the MCL for TTHM. Ag. Rec. at 6. Mount Olive's water does not exceed the MCL for TTHM. Pet. at 3.

The most recent analyses for White City's water supply revealed the following concentrations of TTHM:

MONTH	CONCENTRATION
August 1999	0.172 mg/L
June 1999	0.136 mg/L
February 1999	0.048 mg/L
August 1998	0.187 mg/L

Ag. Rec. at 5. The MCL for TTHM is .10 mg/L. 35 Ill. Adm. Code 611.310(c).

White City has no treatment facilities of its own, and therefore does not treat the water it receives from Mount Olive. Ag. Rec. at 5. White City did not address treatment options in its amended variance petition. The Agency states that White City could install its own treatment system, such as a granular activated carbon (GAC) filtering treatment. Ag. Rec. at 5. However, given that Mount Olive's upgrades will render White City's water compliant, the Agency concludes that requiring White City to incur the costs associated with this treatment option would be a hardship. Ag. Rec. at 5.

White City requests this variance for a period of approximately three years, until December 31, 2002, or until such time as analysis pursuant to 35 Ill. Adm. Code 605.104(a) shows compliance with the MCL for TTHM, whichever occurs first. Pet. at 2. The Agency recommends that the variance be granted only for a period of 12 months. Ag. Rec. at 13. The Agency suggests that 12 months will be an adequate period of time in which to allow White City a full four quarters of sampling to evaluate compliance and make any adjustments to the water that are necessary. Ag. Rec. at 13.

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<sup>2</sup> White City claims that it first got notice of the exceedances on January 22, 1997.

REGULATORY FRAMEWORK

White City’s variance request and the Agency’s recommendation involve two of the Board’s public water supply regulations, but only as those regulations apply to TTHM; 35 Ill. Adm. Code 602.105(a) “Standards of Issuance” and 35 Ill. Adm. Code 602.106(a) “Restricted Status.” The MCL for TTHM is set forth in 35 Ill. Adm. Code 611.310(c). Those regulations provide, in pertinent part, as follows:

602.105(a) “Standards for Issuance”

- (a) The Agency shall not grant any construction or operating permit required by this Part, except as otherwise provided in subsection (d) of this Section, 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 . . . or of this Chapter.

602.106(a) “Restricted Status”

- (a) Restricted status shall be defined as 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.

611.310(c) “Old Maximum Contaminant Levels (MCLs) for Organic Chemicals”

The following are the MCLs for organic chemicals. The MCLs for organic chemicals in subsections (a) and (b) apply to all CWSs. Compliance with the MCLs in subsections (a) and (b) is calculated pursuant to Section 611.641 et seq. Compliance with the MCL for TTHM is calculated pursuant to Subpart P.

Contaminant	Level mg/L	Additional State Requirement (*)
***		
c) TTHM	0.10	*

The cumulative effect of these regulations is that community water supply systems are prohibited from extending water service unless and until their water meets all of the applicable regulatory standards. A community water supply not meeting the MCLs, such as White City, is placed on the Agency’s “Restricted Status” list. A grant of variance from the “Standards for Issuance” or “Restricted Status” listing neither absolves a petitioner from compliance with the

MCLs, nor insulates a petitioner from a possible enforcement action for violation of those standards. The underlying standards remain applicable to the petitioner regardless of whether a variance is granted or denied. City of Altamont v. IEPA (December 7, 1995), PCB 96-65. White City requests the present variance in order to extend its water service while compliance is attained through upgrades to the Mount Olive water supply system.

In its variance petition, White City cites to an outdated version of the Illinois Administrative Code Section 611.310. In 1989, the Board adopted regulations in a general rulemaking that required small system suppliers (those serving fewer than 10,000 persons) to meet the MCL for TTHM by January 1, 1992. In re: Amendments to 35 Ill. Adm. Code 604.203 and 605.104 of Subtitle F: Public Water Supplies (Trihalomethanes) (December 6, 1989), R84-12. In 1990, in the course of an identical-in-substance rulemaking, the Board promulgated 35 Ill. Adm. Code 611.310, and retained the additional state requirement that small systems comply with the MCL for TTHM by January 1, 1992. In re: Safe Drinking Water Regulations (August 9, 1990), R88-26. In a 1992 identical-in-substance rulemaking, the Board deleted the compliance deadline in Section 611.310(d) because the deadline for compliance had already past. In re: Safe Drinking Water Act Update, Phase II and Coliform Rules (July 1, 1990, through January 31, 1991) (November 19, 1992), R91-3. The Board explained that small systems were still subject to the MCL for TTHM found at 611.310(c), and added a Board Note intended to clarify this provision. Although the language of the Board Note may be potentially confusing, the Board has, since November 1992, consistently found that the Section 611.310(c) MCL for TTHM applies to CWSs serving fewer than 10,000 persons. See generally Village of Dorchester v. IEPA (July 8, 1999), PCB 99-161; City of Altamont v. IEPA (December 7, 1995), PCB 96-65; City of Staunton v. IEPA (May 5, 1994), PCB 94-95; Village of Grantfork v. IEPA (November 4, 1993), PCB 93-147; City of Chester v. IEPA (February 25, 1993), PCB 93-23; and City of Highland v. IEPA (January 7, 1993), PCB 92-144. Because it is the Board's intent to clearly express its regulations, the Board will address any possible confusion in the language of its Board Note in the next Safe Drinking Water Act update in which this Part is involved.

In determining whether to grant a variance, Section 35 of the Act requires the Board to determine whether a petitioner has presented adequate proof that immediate compliance with the Board's regulations would impose an arbitrary or unreasonable hardship. 415 ILCS 5/35(a) (1998). Furthermore, the burden is on the petitioner to show that its claimed hardship outweighs the public interest in attaining compliance with regulations designed to protect the public. Willowbrook Motel v. Pollution Control Board, 135 Ill. App. 3d 343, 481 N.E.2d 1032 (1st Dist. 1985). Only with such a showing can the claimed hardship rise to the level of an arbitrary or unreasonable hardship.

A variance is only a temporary relief from compliance with the Board's regulations. Compliance is to be sought regardless of the hardship which the task of eventual compliance presents to an individual polluter. Monsanto v. Pollution Control Board, 67 Ill. 2d 276, 367 N.E.2d 684 (1977). Accordingly, as a condition to the granting of a variance, a petitioner must commit to a plan which is reasonably calculated to achieve compliance within the term of the variance, unless certain special circumstances exist.

### COMPLIANCE PLAN

White City receives its potable water directly from Mount Olive and does not have any treatment facilities of its own. Ag. Rec. at 5. In September 1999, Mount Olive completed installation of an ammonia feeder, which is expected to reduce the concentration of TTHM in water sold to White City to such an extent that White City's water should meet the MCL for TTHM without further treatment. Ag. Rec. at 6.

The Agency recommends that White City continue its sampling program to monitor the level of TTHM in its water supply. Ag. Rec. at 13. This sampling program consists of the collection and analysis of quarterly samples obtained from White City's distribution system at locations approved by the Agency in accordance with 35 Ill. Adm. Code 611.680. Ag. Rec. at 13. The analysis must be performed by a laboratory certified by the State of Illinois for TTHM analysis and the results must be reported to the Agency within 30 days of receipt, with the running average of the most recent four quarterly sample results being reported to the Agency within 30 days of receipt of the most recent quarterly sample result. Ag. Rec. at 13.

The Agency also proposes some additional requirements as a condition of its recommendation that the Board grant White City's variance. Specifically, the Agency recommends that White City, in its first set of water bills, or within three months after the date of the Board's variance order, whichever occurs first, provide written notice to each user of its public water supply to the effect that it has been granted a variance from 35 Ill. Adm. Code 602.105(a) and 602.106(a). Ag. Rec. at 14. Furthermore, if the results of any quarterly sample analysis reveal a violation of the MCL for TTHM, the Agency recommends that White City be required to give public notice pursuant to 35 Ill. Adm. Code 611.851(b). Ag. Rec. at 14. The Agency also recommends that White City be required to provide progress reports to the Agency every six months on the status of its efforts to comply with the above requirements. Ag. Rec. at 14.

### HARDSHIP

White City contends that the Board's denial of the requested variance would impose an arbitrary and unreasonable hardship. Pet. at 8-9. Denial of the variance would bar any new construction that would require an extension of the water supply system in White City during at least the four quarters of sampling necessary to ensure that White City's potable water meets the MCL for TTHM. Pet. at 8. White City maintains that the denial of a variance will negatively impact prospective home purchasers and business developers in the area, as well as reduce its tax base. Pet. at 8.

The Agency agrees that denial of the variance would result in an arbitrary and unreasonable hardship because denial of the variance would require the Agency to continue denying any new construction and operating permits for new water main extensions until four quarters of compliance is achieved. Ag. Rec. at 9. The Agency further agrees that to require White City to install its own treatment facility, in light of Mount Olive's recent upgrades, would result in an unreasonable hardship to White City. Ag. Rec. at 5-6.

### ENVIRONMENTAL IMPACT

According to the Agency, TTHM is an organic chemical consisting of one carbon atom and three halogen atoms. Ag. Rec. at 8. TTHM is formed as a byproduct when drinking water is disinfected with chlorine. TTHM may be carcinogenic and can lead to liver or kidney disorders, birth defects, and central nervous system damage. Ag. Rec. at 8. White City suggests that the granting of this variance will not cause harm to the environment or to the people served by the water supply system. Pet. at 7. White City adds that the concentrations of TTHM in the community water supply will not pose a significant health risk due to the limited time period of the requested variance. Am Pet. at 7. White City admits, however, that it has not made a formal assessment of the effect of the variance on the environment. Pet. at 7.

The Agency agrees that a temporary increase in the allowable concentration for TTHM should cause no significant health risk for the limited population served by White City and for the limited time period recommended for the variance. Ag. Rec. at 9.

### CONSISTENCY WITH FEDERAL LAW

The Agency states that White City may be granted a variance consistent with the requirements of the Safe Drinking Water Act (42 U.S.C. § 300(f)), and the United States Environmental Protection Agency (USEPA) Drinking Water Regulations (40 C.F.R. Part 141 (1998)) because the requested relief would not represent a variance from national primary drinking water regulations. Ag. Rec. at 11. Granting the requested variance from the restricted status listing would only impact the State of Illinois' criteria on granting or denying permits.

The Agency states that even a grant of the variance to White City still leaves White City subject to the possibility of federal enforcement for violations of the MCL for TTHM. Ag. Rec. at 11. The Agency notes, however, that due to the continuing progress toward compliance, the USEPA should not object to the requested variance should the Board decide to issue it. Ag. Rec. at 11.

### CONCLUSION

Based on the record, the Board finds that immediate compliance with 35 Ill. Adm. Code 602.105(a) "Standards for Issuance" and 35 Ill. Adm. Code 602.106(a) "Restricted Status" regulations would impose an arbitrary and unreasonable hardship on White City. The Board also finds that granting this variance does not pose a significant health risk to those persons served by White City's water supply.

Consistent with the Agency's recommendation, we will grant White City a variance which will expire on March 3, 2001, 12 months after entry of this order. This will give White City time to complete four quarterly samples, monitor the water and make adjustments, if necessary, to ensure that it is in compliance with the MCL for TTHM.

The Board's action is solely a grant of variance from 35 Ill. Adm. Code 602.105(a) "Standards for Issuance" and 35 Ill. Adm. Code 602.106(a) "Restricted Status" as they relate to TTHM. The Board is not granting White City a variance from compliance with the MCLs for TTHM.

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

### ORDER

The Village of White City (White City) is hereby granted a variance from 35 Ill. Adm. Code 602.105(a) "Standards for Issuance" and 35 Ill. Adm. Code 602.106(a) "Restricted Status" as they relate to the maximum contaminant level (MCL) for total trihalomethanes (TTHM) in drinking water as set forth in 35 Ill. Adm. Code 611.310(c), subject to the following conditions:

1. The variance terminates March 3, 2001.
2. In consultation with the Illinois Environmental Protection Agency (Agency), White City shall continue its sampling program to determine as accurately as possible the level of TTHM in its public water supply.
3. Until this variance expires, petitioner shall collect and analyze quarterly samples of its water from its distribution system at locations approved by the Agency, in accordance with 35 Ill. Adm. Code 611.680. Analysis shall be done by a laboratory certified by the State of Illinois for TTHM analysis so as to determine the concentration of the contaminant in question. The results of the analysis shall, within 30 days of receipt of the most recent quarterly sample, be reported to:

Illinois Environmental Protection Agency  
Division of Public Water Supplies  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

4. Pursuant to 35 Ill. Adm. Code 611.851(b), in its first set of water bills, or within three months after the date of the Board variance order, whichever occurs first, and every three months thereafter, White City will send to each user of its public water supply, a written notice to the effect that it has been granted a variance by the Board from 35 Ill. Adm. Code 602.105(a) "Standards for Issuance" and 35 Ill. Adm. Code 602.106(a) "Restricted Status," as they relate to the MCL for TTHM. The notice shall state the average content of TTHM in samples taken since the last notice period during which samples were taken.

5. Until compliance is reached, White City shall take all reasonable measures with its existing equipment to minimize the level of TTHM in its finished drinking water.
6. White City shall provide written progress reports to the Agency every six months, concerning steps taken to comply with paragraphs 2, 3, and 4 of this order. Progress reports shall quote each of these paragraphs and immediately below each paragraph state what steps have been taken to comply with that paragraph. White City shall provide these progress reports to the following address:

Illinois Environmental Protection Agency  
Field Operations Section  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

If White City chooses to accept this variance, within 45 days of the grant of the variance, White City must execute and forward the certificate of acceptance to:

Stephen C. Ewart  
Deputy Counsel  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Once executed and received, this certificate of acceptance and agreement shall bind White City to all terms and conditions of the granted variance. The 45-day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the certificate within 45 days renders this variance void.



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 00-68, dated March 2, 2000.

\_\_\_\_\_  
Petitioner

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

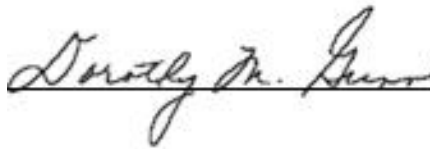
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Title

\_\_\_\_\_  
Date

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 2nd day of March 2000 by a vote of 6-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board