

ILLINOIS POLLUTION CONTROL BOARD  
November 4, 1993

VILLAGE OF GRANTFORK, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 93-147  
 ) (Variance)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

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

This matter is before the Board on the August 10, 1993 filing by petitioner Village of Grantfork (Village) of a petition for variance. The Village seeks relief from 35 Ill. Adm. Code 602.105(a), "Standards for Issuance", and 602.106(a), "Restricted Status", to the extent those rules relate to violation by the Village's public water supply of the 0.10 mg/l standard for total trihalomethanes (TTHM).<sup>1</sup> That standard is set forth at 35 Ill. Adm. Code 611.310(c). The Village requests a variance until February 28, 1996.

On September 7, 1993, the Illinois Environmental Protection Agency (Agency) filed its variance recommendation. The Agency recommends that the variance be granted for thirty months, subject to certain conditions. On October 1, 1993, the Village filed its amended petition, in response to the Board's previous order requesting more information. The Village waived hearing and none has been held.

For the following reasons, the Board finds that the Village has presented adequate proof that immediate compliance with the Board's regulations for "Standards for Issuance" and "Restricted Status" would result in the imposition of an arbitrary or unreasonable hardship. Accordingly, the variance is granted, subject to conditions set forth in the attached order.

BACKGROUND

The Village is a municipality located in Madison County,

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<sup>1</sup> The Village originally also requested a variance from the restricted status rules as they involve atrazine. (Pet. at 1.) However, in its recommendation, the Agency noted that the Village is not in violation of the atrazine standard. (Agency Rec. at 2.) Therefore, the Village has withdrawn its request for a variance for atrazine. (Amended Pet. at 1.)

Illinois. (Pet. at 1.) The Village provides potable water for residential, commercial, and industrial customers in the Village's water district. The total population served by the water district is approximately 800 persons. (Pet. at 3.) Residential customers account for 95% of the total flow. (Pet. at 3.)

The Village owns and operates the distribution system, but purchases treated water from the City of Highland. The Village has no treatment facilities of its own. (Pet. at 4.) The City of Highland was previously on restricted status for TTHM, but was removed from that list on May 23, 1993, after installing additional treatment modifications. (Agency Rec. at 5.) If the requested variance is granted, the Village anticipates extending its water mains to serve Prairie Road and Silver Lake View subdivision. (Pet. at 4.)

The Village was first advised, by the Agency, that its water supply exceed the permissible level of TTHM on March 3, 1992. At that time, the Village's water supply showed a level of 0.13 mg/l for TTHM, thus exceeding the 0.10 mg/l standard. The Agency notified the Village on March 9, 1992 that the Village would be placed on restricted status. (Agency Rec. at 4-5.)

#### REGULATORY FRAMEWORK

The instant variance request concerns two features of the Board's public water supply regulations: "Standards for Issuance" and "Restricted Status". These features are found at 35 Ill. Adm. Code 602.105 and 602.106, which in pertinent part 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. 1989, ch. 111  $\frac{1}{2}$ , pars. 1001 et seq.) (Act), or of this Chapter.

##### Section 602.106           Restricted Status

- 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.

The principal effect of these regulations is to provide that public water supply systems are prohibited from extending water service, by virtue of not being able to obtain the requisite permits, unless and until their water meets all of the standards

for finished water supplies. It is the Village's request that it be allowed to extend its water service while it pursues compliance with the TTHM standard, as opposed to extending service only after attaining compliance.

In determining whether any variance is to be granted, the Act requires the Board to determine whether a petitioner has presented adequate proof that immediate compliance with the Board regulations at issue would impose an arbitrary or unreasonable hardship. (415 ILCS 5/35(a) (1992).) Furthermore, the burden is upon 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 (1st Dist. 1977), 135 Ill.App.3d 343, 481 N.E.2d. 1032). Only with such showing can the claimed hardship rise to the level of arbitrary or unreasonable hardship.

A further feature of a variance is that it is, by its nature, 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, except in certain special circumstances, a variance petitioner is required, as a condition to grant of variance, to commit to a plan which is reasonably calculated to achieve compliance within the term of the variance.

A grant of variance from "Standards for Issuance" and "Restricted Status" does not absolve a petitioner from compliance with the drinking water standards at issue, nor does it insulate a petitioner from possible enforcement action brought for violation of those standards. The underlying standards remain applicable to the petitioner regardless of whether variance is granted or denied.

#### COMPLIANCE PLAN

The Village notes that it does not have a treatment facility, and that it purchases treated water from the City of Highland. The Village states that rather than retreating water that has already been treated by Highland, it is more cost effective for Highland to reduce the concentration of TTHM. The Village notes that Highland has reduced that concentration, and that the Village's most recent test results are significantly improved over the results from July 1992.<sup>2</sup> The Village states

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<sup>2</sup> The Village's water supply showed a level of 0.135 mg/L in July 1993, while the July 1992 test results showed a TTHM level of 0.235 mg/L. (Pet. at 5.)

that Highland was recently removed from restricted status for TTHM, but notes that because TTHM levels increase with contact time in distribution mains, the Village must continue to test for TTHM. (Pet. at 5.)

The Agency states that its records indicate that the Village has not previously sought a variance from regulations pertaining to TTHM. (Agency Rec. at 4.)

#### HARDSHIP

The Village contends that the only methods for reducing TTHMs would be construction of the Village's own treatment plant. The Village maintains that the cost for construction of a plant which would meet Agency guidelines is approximately \$700,000, and that these costs are prohibitive. (Pet. at 5.) The Village notes that without obtaining a variance, construction within its service area could not resume. The Village argues that this would negatively impact prospective home purchasers as well as developers and the Village's tax base. The Village contends that there is no significant risk of environmental harm or harm to the public health for the limited period of the requested variance, and that continuation of restricted status for TTHM would be an arbitrary or unreasonable hardship on the Village, its taxpayers, prospective developers, and persons and industries served by those developers. (Pet. at 7.)

The Agency agrees that denial of the requested variance would result in an arbitrary or unreasonable hardship. (Agency Rec. at 9.)

#### ENVIRONMENTAL IMPACT

Although the Village has not undertaken a formal assessment of the environmental effects of its requested variance, it contends that the granting of the variance for the limited time requested will not cause any significant harm to the environment or to the people served by potential water main extensions. (Pet. at 5.) The Agency also maintains that an incremental increase in the allowable concentration of TTHM should not cause a significant health risk for the limited population served by new watermain extensions for the time period of the requested variance. (Agency Rec. at 7-8.)

#### CONSISTENCY WITH FEDERAL LAW

The Agency states that the requested variance may be granted consistent with the Safe Drinking Water Act (42 U.S.C. 300(f)) and corresponding regulations (40 CFR Part 141) because the variance does not grant relief from national primary drinking water regulations. Therefore, the Agency contends that there is no risk to Illinois of loss of primacy because there is no

federal variance to be presented to USEPA. (Agency Rec. at 10-11.)

### CONCLUSION

Based upon the record, the Board finds that immediate compliance with the "Standards for Issuance" and "Restricted Status" regulations would impose an arbitrary or unreasonable hardship on the Village. The Board also agrees with the parties that granting this variance does not pose a significant health risk to those persons served by any new water main extensions, assuming that compliance is timely forthcoming. The Board notes its concern over the lack of specific information on the projects to which watermains are to be extended. The Village did not furnish any information on the numbers of persons to be served by those extensions, or even if those projects are prospective, or more definite. However, because the Village's only apparent compliance option is construction of a \$700,000 treatment plant to remedy a small exceedence of the allowable concentration<sup>3</sup>, and because the Village has provided at least minimal information on the new watermains, we will grant the variance.

The variance is granted until February 28, 1996, or until analysis pursuant to 35 Ill. Adm. Code 605.104(a) shows compliance with the TTHM standard, whichever occurs first.

Today's action is solely a grant of variance from standards of issuance and restricted status. The Village is not granted variance from compliance with the TTHM standard, nor does today's action insulate the Village in any manner against enforcement for violation of these standards.

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

### ORDER

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

1. Variance shall terminate on the earliest of the following

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<sup>3</sup> As noted above, the Village's most recent running average shows an annual average of 0.106 mg/L of TTHM, while the allowable limit is 0.10 mg/L. (Agency Rec. at 5.)

dates:

- a. February 28, 1996; or
  - b. When analysis pursuant to 35 Ill. Adm. Code 611.684, or any analytical standards then in effect, shows compliance with standards for TTHM in drinking water then in effect.
2. In consultation with the Illinois Environmental Protection Agency (Agency), the Village shall continue its sampling program to determine as accurately as possible the level of TTHM in its public water supply. Until this variance terminates, the Village 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. The results of the analyses shall be reported within 30 days of receipt of the most recent result to:

Illinois Environmental Protection Agency  
Compliance Assurance Section  
Division of Public Water Supplies  
2200 Churchill Road  
Springfield, Illinois 62794-9276

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.

3. Pursuant to 35 Ill. Adm. Code 611.851(b) (formerly 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, the Village will send to each user of its public water supply a written notice to the effect that the Village 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(a) "Restricted Status", as they relate to the TTHM standard.
4. If results or analyses performed on samples pursuant to 35 Ill. Adm. Code 611.685 show a violation of the MCL, then public notice shall be made pursuant to 35 Ill. Adm. Code 611.851(b).
5. Until full compliance is achieved, the Village shall take all reasonable measures with its existing equipment to minimize the level of TTHM in its finished drinking water.
6. The Village shall provide written progress reports to the

Agency at the address below every six months concerning steps taken to comply with this Order. Progress reports shall quote each paragraph and immediately below each paragraph state what steps have been taken to comply with each paragraph:

Illinois Environmental Protection Agency  
Division of Public Water Supply  
Field Operations Section  
2200 Churchill Road  
P. O. Box 19276  
Springfield, Illinois 62794-9276

- 7. Within forty-five days of the date of this order, the Village shall execute and forward to:

Stephen C. Ewart  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
P.O. Box 19276  
2200 Churchill Road  
Springfield, Illinois 62794-9276

a Certificate of Acceptance and agreement to be bound 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. The form of Certificate is as follows.

I (We), \_\_\_\_\_,  
hereby accept and agree to be bound by all terms and conditions of the order of the Pollution Control Board in PCB 93-147, dated November 4, 1993.

\_\_\_\_\_  
Petitioner

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

\_\_\_\_\_  
Title

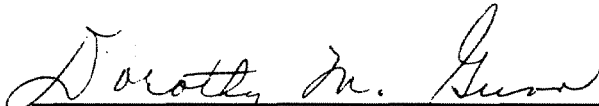
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Date

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 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 4<sup>th</sup> day of November, 1993, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board