

ILLINOIS POLLUTION CONTROL BOARD
April 9, 1992

CITY OF PROSPECT HEIGHTS)	
(Rob Roy Water System),)	
)	
Petitioner,)	
)	
v.)	PCB 90-224
)	(Variance)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

This matter comes before the Board upon filing by the City of Prospect Heights (Prospect Heights) on March 24, 1992 of a motion to amend the Board's variance order as entered March 28, 1991. This variance concerns non-compliance with the current United States Environmental Protection Agency (USEPA) and Board radium maximum contaminant levels (MCLs). The Illinois Environmental Protection Agency (Agency) filed a response on April 7, 1992 recommending grant of Prospect Heights' motion.

Prospect Heights observes that at the time of the original grant of variance the USEPA had not yet declared its position concerning revision of the radium MCLs¹. Prospect Heights further observes that conditions upon which the grant of variance was contingent were premised in part on assumptions regarding the direction likely to be taken by USEPA. Among these assumptions was that any revised radium MCLs would become effective shortly upon their being proposed.

However, when the USEPA did announce its proposed radium MCLs on July 18, 1991, it also proposed that they not be effective until October 1994. A consequence of this unexpectedly long time between proposal and effective date is that the default dates built into the March 1991 version of Prospect Heights' variance will trigger prior to the effective date of any new MCLs; this was not intended. The default dates were intended to function only should the USEPA fail to promulgate new radium regulations. Accordingly, Prospect Heights requests that the default dates be adjusted.

¹ In anticipation of USEPA revision of the radium standard, the legislature amended the Illinois Environmental Protection Act at Section 17.6 in 1988 to provide that any new federal radium standard immediately supersedes the current Illinois standard.

The Board accepts Prospect Heights' arguments, and accordingly will modify the variance. For the purpose of maintaining the variance order as a single entity, the Board will reissue the order in its modified entirety. The Board notes that Prospect Heights will need to execute a new Certificate of Acceptance for the modified variance to become effective.

ORDER

Petitioner, City of Prospect Heights, is hereby granted variance, for its Rob Roy Water System from 35 Ill. Adm. Code 602.105(a), Standards of Issuance, and 602.105(b), Restricted Status, as they relate to the standard for radium in drinking water of 35 Ill. Adm. Code. Subtitle F. This grant of variance supersedes the grant of variance entered by this Board on March 28, 1991, and is subject to the following conditions:

- (A) For the purposes of this Order, the date of USEPA action shall consist of the earlier of the:
 - (1) Effective date on any regulation promulgated by the U.S. Environmental Protection Agency ("USEPA") which amends the maximum concentration level for combined radium, either of the isotopes of radium, or the method by which compliance with a radium maximum concentration level is demonstrated; or
 - (2) Date of publication of notice by the USEPA that no amendments to the 5 pCi/l combined radium standard or the method for demonstrating compliance with the 5 pCi/l standard will be promulgated.
- (B) Variance shall terminate on the earliest of the following dates:
 - (1) When analysis pursuant to 35 Ill. Adm. Code 611. Subpart Q, or any compliance demonstration method then in effect, shows compliance with standards for radium in drinking water then in effect;
 - (2) Two years following the date of USEPA action; or
 - (3) April 9, 1996.
- (C) Compliance shall be achieved with any standards for radium then in effect no later than the date on which this variance terminates.
- (D) 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 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 to determine the concentration of 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 result to:

Illinois Environmental Protection Agency
Compliance Assurance Section
Division of Public Water Supplies
P.O. Box 19276
2200 Churchill Road
Springfield, Illinois 62794-9276

- (E) Within three months of USEPA action , Petitioner shall apply to the Agency at the address below for all permits necessary for construction of installations, changes, or additions to Petitioner's public water supply needed for achieving compliance with the maximum contaminant level for combined radium, or with any standards for radium in drinking water then in effect:

Illinois Environmental Protection Agency
Division of Public Water Supply
Permit Section
2200 Churchill Road
Springfield, Illinois 62794-9276.

- (F) 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 (E) of each of the following actions: 1) advertisement for bids, 2) names of successful bidders, and 3) whether Petitioner accepted the bids.
- (G) Construction allowed on said construction permits shall begin within a reasonable time of bids being accepted. In any case, construction of all installations, changes or additions necessary to achieve compliance with the maximum contaminant level of combined radium, or with any standards for radium in drinking water then in

effect, shall be completed no later than two years following the date of USEPA action.

- (H) 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, 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 radium standard.
- (I) 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, Petitioner shall send to each user of its public water supply a written notice to the effect that Petitioner is not in compliance with standard for radium. The notice shall state the average content of radium in samples taken since the last notice period during which samples were taken.
- (J) Until full compliance is achieved, Petitioner shall take all reasonable measures with its existing equipment to minimize the level of combined radium, radium-226, and radium-228 in its finished drinking water.
- (K) Petitioner shall provide written progress reports to the Agency at the address below every six months concerning steps taken to comply with the paragraphs of 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.

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

Within 45 days of the date of this Order, Petitioner shall execute and forward to Stephen C. Ewart, Division of Legal Counsel, 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 90-224, April 9, 1992.

Petitioner

Authorized Agent

Title

Date

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1989 ch. 111 ½ 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 Member B. Forcade dissents.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 9th day of April, 1992, by a vote of 6-1.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board