

ILLINOIS POLLUTION CONTROL BOARD
May 23, 1991

CITY OF MT. VERNON,)
)
 Petitioner,)
) PCB 90-228
 v.) (Variance)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

This matter comes before the Board on the City of Mt. Vernon's ("Mt. Vernon") December 7, 1990 petition and January 25, 1991 amended petition for variance in relation to its public water supply. More specifically, Mt. Vernon seeks relief from 35 Ill. Adm. Code 602.105(a), Standards for Issuance, and 35 Ill. Adm. Code 602.106(a), Restricted Status, but only as they relate to section 611.310(c), Total Trihalomethanes (TTHM). No hearing was held in this matter. On April 1, 1991, the Illinois Environmental Protection Agency ("Agency") filed its recommendation that variance be granted with conditions.

On May 23, 1990, the Agency took a sample of Mt. Vernon's public water supply. Mt. Vernon was notified on June 18, 1990 that it would be placed on the Restricted Status List for exceeding the 0.10 mg/l maximum contaminant level (MCL) for TTHM. After being notified of the exceedance, Petitioner placed its water treatment plant out of service and obtained all of its water from the Rend Lake Intercity Water System. As a result, Mt. Vernon was removed from the Restricted Status List. (Agency Rec. p. 4).

After shutting down its water treatment facility, Mt. Vernon developed a plan to implement improvements at the plant; namely, to reduce the TTHM content to acceptable levels. In order to do so, the city applied for a permit to the Agency to install an aqua ammonia feed system on July 5, 1990. The Agency granted this permit (#0064-FY1991) and Mt. Vernon completed installation of the aforementioned device on January 17, 1991. (Amended Pet. p. 2).

Despite the installation, if Mt. Vernon starts up the revamped water treatment facility it will, without variance, again be placed on restricted status until it shows compliance with the TTHM standard, which is based upon a running average of four sample sets from four consecutive quarters. That is, even though the water quality may now meet present standards, utilizing the prior sample results of the now modified plant will cause the facility to be out of compliance with the sample

requirements imposed by the public water regulations. Thus Mt. Vernon seeks a variance so that the water treatment plant, as modified, may be returned to service without Mt. Vernon being placed on the Restricted Status list. (Amend. Pet. p. 2,3).

Mt. Vernon alleges that no negative environmental impacts will result by the issuance of this variance in that no adverse effects will be imposed upon human, animal or plant life. The city maintains that all pertinent regulations will be met with the exception of the consecutive four quarters standard. The May 23, 1990 TTHM count of 0.176 mg/l caused the running average of the analyses of four quarterly samples from July 23, 1987 through May 23, 1990 to be 0.116, mg/l, thus, exceeding the 0.10 mg/l standard.* The Agency concurs with this assessment and states that granting the requested variance would impose no significant injury to the public or the environment for the limited time period requested. (Amended. Pet. Ex. B; Agency Rec. p. 7,8).

Both the Agency and Mt. Vernon likewise assert that denial of a variance would impose an arbitrary and unreasonable hardship upon Mt. Vernon. The City states that, without the water treatment plant in operation as a readily available "backup", the system reliability is substantially lessened. Mt. Vernon is 18 miles away from Rend Lake and in the event of any problems with that source or its system, the City would be unable to service its citizens without delay in starting up the plant. In addition to its community of over 7,000, Mt. Vernon also serves six other municipalities and rural water supply systems. Moreover, regardless of whether its water treatment facility is operational, the City continues to incur the costs of its plant under its bonds for debt service in addition to personnel costs. (Amend. Pet. p. 3, 4; Agency Rec. p. 7).

Mt. Vernon further states that it has received industrial plant additions to its system in the past four years and currently has an industrial prospect with which it has been working over the past nine months that would use an estimated one million gallons per day. Such a demand could not be met absent a functioning water treatment plant. This is in addition to other commercial and industrial prospects which are currently considering locating within the City's water service area. Mt. Vernon maintains that its commercial and industrial prospects are exceedingly good, and it has every reason to believe that several of its prospects will be successful, thereby adding substantially to the demand of water within the municipality. In this vein, Mt. Vernon asserts that its water system operates substantially better with additional supplies from its water treatment plant,

* The Agency states, apparently inadvertantly, that the four quarters running average was 0.176 mg/l. See Agency Rec. p. 5.

which is centrally located and which provides pressure patterns which decrease main breakage and provide for less variation and better system reliability. (Amend. Pet. p. 3-5).

Of equal significance, the Agency states that issuance of this variance will comport with federal law. Since the variance is only from restricted status, which is a state regulation, and not from the national primary drinking water standards, it would not contravene the requirements of the Safe Drinking Water Act or the USEPA Drinking Water Regulations (40CFR Part 141). (Agency Rec. p. 8,9).

The Board finds that Mt. Vernon has presented adequate proof the immediate compliance would impose an arbitrary or unreasonable hardship. The likelihood of adverse public health or other environmental effects is minimal, while the detrimental effects of being placed on restricted status until four quarterly samples from the revamped treatment system would be substantial.

Finally, we agree that, pursuant to the Ill. Rev. Stat. 1989 chap 111-1/2 par. 35(a), granting this variance is consistent with federal law. Accordingly, the Board will grant this variance subject to conditions.

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

ORDER

The Board hereby grants the City of Mt. Vernon a variance from 35 Ill. Adm. Code 602.105(a) and 35 Ill. Adm. Code 602.106(a), but only as they relate to 35 Ill. Adm. Code 611.310(c), the Total Trihalomethane standard, and subject to the following conditions:

A. This variance shall be granted for 15 months in order to give the Petitioner one extra quarter for testing samples so it will be able to show the required four quarterly samples to be in compliance with the maximum contaminant level.

B. In consultation with the Agency, Petitioner shall continue its sampling program to determine as accurately as possible to level of THMs in its public water supply through the water treatment facilities. Until this variance expires, Petitioner shall collect quarterly samples of its water from its distribution system at locations approved by the Agency in accordance with 35 Ill. Adm. Code 611.680. Petitioner shall collect quarterly samples from each location separately and shall have them analyzed by a laboratory certified by the State of Illinois for THM analysis so as to determine the concentration of the contaminant in question. The results of the analyses shall be reported to the Compliance Assurance Section, Division of Public Water Supplies, 2200 Churchill Road, IEPA, Springfield,

Illinois 62794-9276, within 30 days of receipt of each analysis. The running average of the most recent four quarterly sample results shall be reported to the Agency at the above address within 30 days of receipt of the most recent quarterly sample.

C. Pursuant to 35 Ill. Adm. Code 611.851(b), 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 that Petitioner has been granted a variance by the Pollution Control Board from 35 Ill. Adm. Code 601.105(a) Standards of Issuance and 35 Ill. Adm. Code 602.106(a) Restricted Status, as it relates to the MCL standard in question.

D. If results of 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).

E. Until full compliance is reached, Petitioner shall take all reasonable measures in complying with the sampling requirements for the contaminant in question.

F. The Petitioner shall provide written progress reports to IEPA, DPWS, FOS every six months concerning steps taken to comply with paragraphs A, B, C, D, and E. Progress reports shall quote each of said paragraphs and immediately below each paragraph state what steps have been taken to comply with each paragraph.

G. Within 45 days after the date of this Opinion and Order Mt. Vernon shall execute and send to:

Illinois Environmental Protection Agency
 Stephen Ewart, Deputy Counsel
 Division of Water Pollution Control
 Compliance Assurance Section
 2200 Churchill Road, P.O. Box 19276
 Springfield, Illinois 62794-9276

a certificate of acceptance of this variance by which it agrees to be bound by the terms and conditions contained herein. This variance will be void if the Petitioner fails to execute and forward the certificate within the 45 day period. The 45 day period shall be in abeyance for any period during which the matter is appealed. The form of the certification shall be as follows:

CERTIFICATION

I, (We), _____, having read the Opinion and Order of the Illinois Pollution Control Board, in PCB 90-

228, dated May 23, 1991, understand and accept the said Opinion and Order, realizing that such acceptance renders all terms and conditions thereto binding and enforceable.

Petitioner

By: Authorized Agent

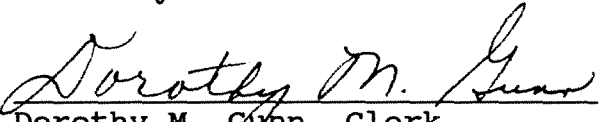
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Date

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1989, 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.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 23rd day of May, 1991 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board