

ILLINOIS POLLUTION CONTROL BOARD  
February 28, 1991

CITY OF BATAVIA, )  
 )  
Petitioner, )  
 )  
v. ) PCB 89-183  
 ) (Variance)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

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

This matter is before the Board on a motion to amend Board order, filed by petitioner the City of Batavia on January 18, 1991. Batavia asks the Board to amend its August 9, 1990 opinion and order which granted Batavia a variance, subject to conditions, from 35 Ill.Adm.Code 602.105(a) and 602.106(b), as those rules relate to the combined radium-226 and radium-228 standard set forth in 35 Ill.Adm.Code 611.330(a). The Illinois Environmental Protection Agency (Agency) filed its response to Batavia's motion on January 30, 1991.

Batavia asks that, "in light of the impending proposal of a new radium standard by U.S. EPA, which will significantly affect Batavia in terms of the east side compliance program, and given Batavia's progress in implementing its compliance plan with respect to the west side", the Board amend the variance granted on August 9, 1990. (Motion at 3.) Apparently Batavia asks that two conditions of the variance, that Batavia can only provide water to projects which were approved by Batavia as of August 9 and that connection of approved projects cannot occur until the west side construction contract is actually awarded, be removed. The Agency states that it endorses Batavia's request.

The Board is puzzled how the pending USEPA proposal of a new radium standard has any impact on those two conditions.<sup>1</sup> Batavia states that the new radium standards will have "a significant impact" on the west side construction because it may not have to blend shallow and deep well water, but commits to completing the west side compliance plan. (Motion at 5.) Batavia's only request is that the Board remove the two conditions. The Board emphasizes that the two challenged conditions have no connection with the

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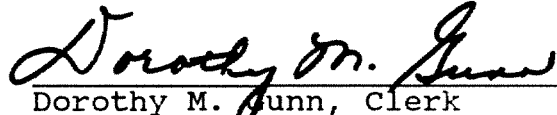
<sup>1</sup> The Board notes that although USEPA was to have published its proposal by January 25, 1991, the federal proposal apparently will not be published until August 1991.

pending federal radium standards. In fact, Batavia's variance does make allowance for the new standards in connection with the east side improvements. (August 9, 1990 order, at pp. 9-10.) Although Batavia's motion refers to the pending federal proposal and to its progress on the west side plan, nowhere does Batavia demonstrate why the two conditions should be deleted. The Board sees no nexus between the two conditions, the pending federal standards, and Batavia's progress on the west side plan.<sup>2</sup> Batavia's motion to amend is denied.

IT IS SO ORDERED.

J. Anderson and R. Flemal dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 28<sup>th</sup> day of February, 1991, by a vote of 4-2.

  
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 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board

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<sup>2</sup> The Board notes that to any extent that progress on the west side plan is slightly ahead of the timetable sent forth in the variance, Batavia will be able to award the west side construction contract earlier. Batavia states that it anticipates that the contract will be awarded in mid-March 1991, less than a month from now.