

ILLINOIS POLLUTION CONTROL BOARD
October 7, 1993

IN THE MATTER OF:)
)
PETITION OF ILLINOIS POWER) AS 92-7
COMPANY (VERMILION POWER STATION)) (Adjusted Standard)
FOR ADJUSTED STANDARDS FROM 35)
ILL. ADM. CODE 302.208(e))

CONCURRING OPINION (by J. Anderson and J. Theodore Meyer):

Section 28.1(c)(3) of the Act includes the following:

...the Board may grant individual adjusted standards whenever the Board determines, upon adequate proof by petitioner, that:

* * *

3. the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and ...

We believe that the Board's determination and supporting reasoning should have been limited to the finding that Illinois Power has not presented adequate proof under Section 28.1(c)(3) Where the Board addresses the issues that go beyond this, in our view, serves to confuse this matter. In some instances the Board reaches conclusions that we believe are wrong or risk setting unfortunate precedents.

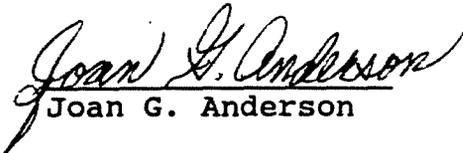
The Board's negative determination that Illinois Power's proof doesn't get through the above-quoted statutory "environmental door" provides a firm basis for not granting the adjusted standard. This "stand-alone" environmental proof requirement is a distinguishing feature of the adjusted standard process in Title VII of the Act. We believe that the record supports the Board's determination, particularly insofar as the data is insufficiently focused on the before-and-after effects of Illinois Power's discharge on the aquatic life of this waterway.

As for other issues argued, we note that we are not dealing here with a situation where Illinois Power intends to change the characteristics of its waste stream or its long-standing discharge (an adjusted standard condition could assure this in any event had the petition been granted). We would have avoided concluding that raising the standard would result in raising Illinois Powers's potential to pollute, and we would not have used as a reason for denial that the federal antidegradation

issue applies. We do not accept the notion that a grant might conflict with some future right of persons for tapping this waterway, certainly not for the future uses that are mentioned in this record.

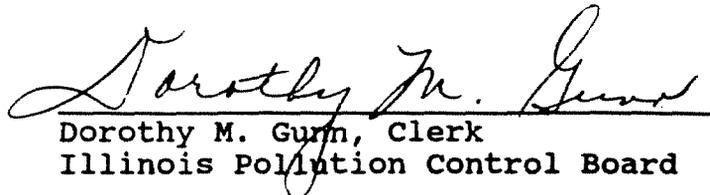
Finally, we are concerned that the opinion's lengthy discussion of consistency with Section 27(a) of the Act places undue weight on a question of consistency at the expense of the justification proofs required in Section 28.1(c). Also, we would argue that in this case Section 27(a) review is unnecessary in that the Board is denying the request because of insufficient justification based on inadequate proof. What Section 28.1(a) says is that the Board must assure itself before granting an adjusted standard "for persons who can justify such an adjustment" that the decision is consistent with Section 27(a). In any event, we agree that the Section 27(a) regulatory considerations do not enhance Illinois Power's position. Compliance with the generally applicable standard is neither technically infeasible nor economically unreasonable and the nature of the receiving water is special indeed.

It is for these reasons that we respectfully concur.


Joan G. Anderson


J. Theodore Meyer

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above concurring opinion was submitted on the 20th day of October, 1993.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board