

ILLINOIS POLLUTION CONTROL BOARD
September 30, 1976

IN THE MATTER OF:)
NPDES REGULATIONS) R73-11 & R73-12
)

ORDER OF THE BOARD (by Mr. Goodman):

On August 16, 1976, the Illinois Environmental Protection Agency (Agency) requested the Illinois Pollution Control Board (Board) to change the effective date of Rule 410(c) of the Water Regulations (Chapter 3). The Agency requested that the Board make Rule 410(c) immediately effective rather than contingent upon transfer of NPDES authority from the United States Environmental Protection Agency (U.S.E.P.A) to the State of Illinois.

In adopting R73-11 and R73-12, the NPDES Regulations, the Board anticipated the prompt transfer of NPDES authority from U.S. EPA to the State. Therefore, all the regulations adopted in R73-11 and R73-12 were to be effective upon the date of approval and transfer of NPDES authority to the State by the Administrator of U.S. EPA, whether or not that particular regulation depended upon the transfer of authority for its basis. Subsequent facts have not validated the Board's anticipation of the transfer of authority.

Rule 410(c) states as follows:

The standards of Chapter 3 shall apply to thermal discharges unless, after public notice and opportunity for public hearing, in accordance with Section 316 of the FWPCA and applicable federal regulations, the Administrator and the Board have determined that different standards shall apply to a particular thermal discharge.

It is obvious on a plain reading of the Regulation that the application of 410(c) is not contingent upon the adoption of the NPDES authority by the State of Illinois. Rather it determines the relationship between the Board, the standards of Chapter 3 with respect to thermal discharges, and Section 316 of the FWPCA, regardless of what authority is in charge of the NPDES permit system at any particular time.

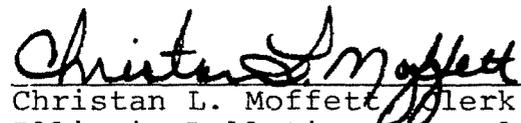
The Board, therefore, finds that since NPDES authority has not been transferred to the State of Illinois, and 410(c) as a regulation is necessary for the protection of the environment in the State of Illinois, and there is no relation between 410(c) and the transfer of NPDES authority to the State of Illinois, 410(c) should be made effective immediately.

The Board, therefore, proposes to amend the adopting Order in R73-11 and R73-12 to the extent that Rule 410(c) be made effective immediately. In accordance with the Board's policy of public notice and public participation, the foregoing proposed amendment to the Board Order shall be published in the next Environmental Register for the purpose of public comment. The Public Comment period shall run until November 15, 1976. After consideration of the public comment received pursuant to publication, the Board shall make a final decision concerning the effective date of Rule 410(c).

In consideration of the foregoing, the amendment to Rule 410(c) of the Water Regulations as proposed by the Agency is hereby denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 30th day of September, 1976 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board