

ILLINOIS POLLUTION CONTROL BOARD
February 21, 1980

NICHOLS HOMESHIELD, INC.,)
)
 Petitioner,)
)
 v.) PCB 79-66
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by Mr. Goodman):

Respondent Illinois Environmental Protection Agency (Agency) on January 9, 1980 requested a ruling on the applicability of the 90-day decision period in §40 of the Illinois Environmental Protection Act (Act) to NPDES permit appeals.

Neither Respondent nor Petitioner "must" waive the date by which the Board must decide this NPDES permit appeal case. A waiver is a known and voluntary relinquishment of rights; as such the Board does not require it.

The Board previously announced the applicability of the 90-day decision period provision to cases involving NPDES permit appeals. Environmental Register, #205, p.3 (November 27, 1979).

To hold that the 90-day provision applies in the federally-delegated NPDES permit program would permit violations of §301, §302, §306-308, §318, and §405 of the Federal Water Pollution Control Act (FWPCA). For example, to the extent that permits granted by operation of law under §40 of the Act would contain effluent limitations less strict than the federal limitations required under §301(b) of the FWPCA, the continued authority of Illinois to administer the NPDES program would be jeopardized. FWPCA, §402(b). Such permits issued inconsistently with the minimum federal requirements expressed in the above-cited sections of the FWPCA would be voidable. §309(a)(1), FWPCA. Such permits would jeopardize Illinois' authority to administer the NPDES program. FWPCA, §309(a)(2). Such a result is clearly inconsistent with the findings of the Legislature in §11(a)(3) of the Act.

Finally, §38 of the Act is inapplicable to the extent that a variance from regulations promulgated pursuant to the FWPCA similarly jeopardizes Illinois authority to administer the NPDES program.

The Board therefore holds that the 90-day decision period provision of §40 of the Act is inapplicable to NPDES permit appeals.

Petitioner and Respondent are ordered to proceed with the hearing requested. Petitioner's waiver to April 15, 1980 is hereby made moot.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted by the Board on the 21st day of February, 1980, by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board