

ILLINOIS POLLUTION CONTROL BOARD
July 22, 1993

IN THE MATTER OF:)
)
PETITION OF THE ILLINOIS-AMERICAN)
WATER COMPANY FOR AN ADJUSTED) AS 91-12
STANDARD FROM 35 ILL. ADM. CODE 304.124) (Adjusted Standard)
(IRON AND TSS ONLY) FOR THE WATER)
COMPANY'S CAIRO PUBLIC WATER)
SUPPLY FACILITY)

ORDER OF THE BOARD (by R.C. Flemal):

On June 1, 1993 Illinois-American Water Company (Water Company) filed an amended petition in this matter. The amended petition was accompanied by a motion wherein the Water Company seeks summary judgment on three matters of dispute between it and the Illinois Environmental Protection Agency (Agency)¹.

On June 22, 1992 the Agency countered with a motion to dismiss, in which it contends that the natural consequence of a ruling of summary judgment in its favor is dismissal of this proceeding.

The Agency also filed a reply to the motion for partial summary judgment on July 1, 1993 and a motion to file attachment #1 to its reply on July 2, 1993².

Only the first of the three matters of dispute will be addressed today. That matter is whether the Water Company has failed to state a claim upon which an adjusted standard can be granted in that the Water Company does not discharge "directly" to the Ohio River. The remaining two matters³ are either not sufficiently developed or appropriate for summary judgment and their consideration for summary judgment is hereby denied.

¹ The Agency stands as a party in this matter pursuant to the adjusted standards procedures of the Environmental Protection Act (Act) at 415 ILCS 5/28.1, 28.3.

² The Board grants the unopposed motion to file attachment #1 to the Agency's reply.

³ These are whether the Water Company has failed to state a claim upon which an adjusted standard can be granted in that the Water Company is seeking (1) purely contingent or prospective relief and (2) relief based solely on economic considerations.

BACKGROUND

This proceeding was initiated under Section 28.3 of the Act. Section 28.3 provides for a special adjusted standards procedure applicable to the discharge of residues from certain water purification processes.

The portion of Section 28.3 pertinent to the issues now before the Board is found at Section 28.3(a):

Utilizing the provisions of Section 28.1 and this Section, alternative requirements may be established by the Board in an adjusted standards proceeding for the direct discharge of waste solids to the Mississippi or Ohio Rivers from clarifier sludge and filter backwash generated in the water purification process. Any public water supply utilizing the Mississippi or Ohio Rivers as its raw water source may initiate such a proceeding provided that its waste solids are generated as described herein and it does not utilize lime softening in the purification process. [emphasis added]

It is undisputed that the Water Company meets all of the qualifying requirements set forth at Section 28.3(a) except for whether the Water Company's discharge is a "direct discharge".

The matter is confounded by the fact that the Water Company's discharge is associated with the operations of a second discharger, the City of Cairo's publicly owned treatment works (Cairo POTW). The Water Company observes that it "currently discharges its public water supply treatment residual solids to the Cairo [POTW] discharge line connected to the public water supply plant" (Amended Petition at ¶3). Nevertheless, the Water Company also observes that its "discharges are being bypassed directly to the Ohio River without treatment" (Amended Petition at ¶8). On this basis the Water Company contends that it is a direct discharger.

The Water Company raises other arguments in support of its "directed discharge" contention, among which is the allegation that the Agency has taken a contrary position in an other pending Section 28.3 petition. The Board finds none of these arguments relevant.

The Agency contends that because the Water Company discharges "to the Cairo POTW's sewer line" (Agency Reply at p. 2) the discharge is an "indirect" rather than direct discharge. The Agency further observes:

The Agency classifies the Water Company's discharge as an indirect discharge, rather than being a direct discharger as referred to in Section 28.3 of the Act.

Pursuant to the Clean Water Act ("CWA") an indirect discharger is defined as "a non-domestic discharger introducing 'pollutants' to a publicly owned treatment works." (40 C.F.R. 122.2). The Act does not define indirect discharge, but 35 Ill. Adm. Code 310.110 defines it as "the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the CWA (33 U.S.C. 1317(b), (c) or (d))". The Water Company is a non-domestic source which is or would be regulated under Section 307 of the CWA discharging to a POTW and therefore should be defined as an indirect discharger.

(Agency Motion at ¶4.)

CONCLUSION


The Water Company's motion for partial summary judgment is hereby denied. There are too many unclear issues regarding the relationship between the Water Company's discharge and the Cairo POTW for this Board to here find favor with the Water Company's contention that any or even a part of its discharges are "direct" in the sense of Section 28.3. The Board assumes that the Water Company and the Agency will fully expound upon this relationship, including detailed physical layout of all relevant structures and all legal consequences, at the hearing or via written pleading.

The Agency's motion to dismiss because the Water Company's discharge is not direct in the sense of Section 28.3 is also denied. The Water Company is clearly an "indirect discharger" as envisioned under the pretreatment provisions of the Clean Water Act and the pretreatment provisions of the Board's water pollution regulations. What is not clear as yet is whether the Water Company's asserted direct discharge falls within the provisions of Section 28.3.

Lastly, the Board notes that the Agency also moves dismissal of this proceeding on the basis that the Water Company's petition is deficient with respect to 35 Ill. Adm. Code 106.705. (See Agency Motion at ¶9.) Section 106.705 is that portion of the Board's procedural regulations that specifies the necessary contents of a petition for an adjusted standard. The Board finds that the Agency's pleading is deficient in that it fails to specify how the Water Company petition fails to comply with Section 106.705. The Agency's motion to dismiss on this basis is likewise denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 5th day of July, 1993, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board