

ILLINOIS POLLUTION CONTROL BOARD  
June 21, 1990

CALVARY TEMPLE CHURCH, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 90-3  
 ) (Permit Appeal)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

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

This matter comes before the Board upon a Motion to Reconsider filed May 30, 1990 by the Illinois Environmental Protection Agency. A response was filed by Calvary Temple Church ("Calvary") on June 14, 1990. The Board today grants reconsideration, and upon reconsideration declines to change its decision, standing on the reasoning contained in its Opinion and Order of April 26, 1990.

This matter originally came before the Board upon a petition for review of a denial of a permit to construct and operate a wastewater land treatment system filed by Calvary Temple Church ("Calvary"). On April 26, 1990 the Board remanded the matter to the Agency for consideration and evaluation of whether or not Petitioner's wastewater land treatment system would cause a violation of the Act and applicable Board regulations. In its Opinion, the Board found that the Agency failed to afford the applicant a full technical review.

The Agency asks the Board to reconsider its decision, alleging that the permit was not consistent with State and Federal law, and that Calvary had not demonstrated that its wastewater land treatment system would not violate Section 4(m) of the Act or Section 208 of the Clean Water Act (33 U.S.C. §1251 et seq.). The Agency also argues that it is precluded from issuing a permit to Calvary because the Agency made a finding that an inconsistency with the Illinois Water Quality Management Plan ("IWQMP") exists. The Agency argues that the Board has no jurisdiction to review this permit denial essentially because the Agency found an inconsistency with the IWQMP. The Agency further alleges that the Board has no jurisdiction in this permit denial because Calvary has not exhausted its administrative remedies. The Agency also submits that the Board's reliance on the First District Appellate Court Opinion Jurcak v. Illinois Environmental Protection Agency (112 Ill. Dec. 398, 513 N.E. 2d 1007 (1987)); is misplaced. The Board will address each of these arguments in turn.

The first two Agency arguments, those regarding consistency with State and Federal law and Board jurisdiction, were addressed by the Board in its April 26 Opinion. The Board finds nothing convincing in the Agency's arguments which would change the findings made in that Opinion. However, the Board notes that the Agency is alleging that the Board remand somehow places the Agency in a position to do something which is contrary to the Act, Board regulations, or Federal law. The Board does not believe this is true. The Board emphasizes that in its Opinion it found that the Section 208 planning requirements apply to a land treatment system such as Calvary's. The Board agrees with the Agency that permits, if granted, should be consistent with all applicable State and Federal laws. The Board notes, however, that the requirement that the Agency deny a permit if an inconsistency exists is contained in the Agency's Section 351 rules. The Board made no finding whether the Section 351 rules apply to Calvary's land treatment system. The Board also did not order the Agency to issue the permit. Furthermore, in its denial letter, the Agency stated that Section 4(m) of the Act may be violated. The Board reiterates that Section 4(m) does not require an applicant to secure concurrences of the planning agencies under the IWQMP prior to full Agency technical review.

The Board also emphasizes, as Calvary states in its reply, the Board has jurisdiction to review permit denials when an applicant files a review pursuant to Section 40 of the Act. In this regard, the Board is not convinced that its reliance on the Jurcak opinion is misplaced. The Agency points to apparent factual differences between the instant appeal and the Jurcak appeal. The Agency appears to be arguing that the reason the Board had jurisdiction in the Jurcak case is due to the fact that the Agency issued a permit with conditions, giving the Board something to review. The Board believes that there is an obvious flaw in this reasoning, as, taken to its logical conclusion, the Agency is arguing that the Board would never have jurisdiction in any permit denial. This is clearly contrary to Section 40 of the Act. The Board realizes that there are factual differences between the instant case and the Jurcak appeal. These distinctions are mainly that Jurcak elected to go through the Agency's conflict resolution procedures under the Agency's Section 351 rules, prior to review by the Board, where the applicant here did not. The Board believes that these differences do not affect the application of the reasoning of the Jurcak Opinion to this matter.

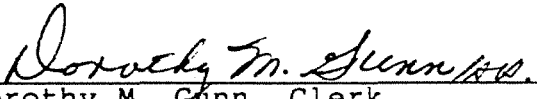
The Agency also argues that since Calvary did not go through the Section 351 conflict resolution procedures, or appeal the Agency's decision to the circuit court, Calvary has failed to exhaust its administrative remedies, leaving the Board without jurisdiction. The Board finds that there is no requirement that all other options be exhausted before an applicant may appeal a

permit denial to the Board. Although the Board's role in permit denials is quasi-judicial, Board review is an administrative remedy. Section 40 of the Act provides a clear right to an applicant to appeal a permit denial to the Board and the Board has clear jurisdiction to review such denials under the Act. To hold otherwise could also be interpreted as stating that applicants must request that the Agency reconsider a permit denial prior to any appeal to the Board--a situation which has never been required.

For the reasons stated above and in the April 26, 1990 Opinion, the Board declines to change its determination.

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 21<sup>ST</sup> day of JUNE, 1990, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board