

ILLINOIS POLLUTION CONTROL BOARD
May 10, 1990

IN THE MATTER OF:)
)
PROPOSED SITE-SPECIFIC RULE)
CHANGE FOR THE CITY OF EAST) R87-35
MOLINE'S PUBLIC WATER SUPPLY) (Rulemaking)
TREATMENT PLANT DISCHARGE:)
35 ILL. ADM. CODE 304.218)

ORDER OF THE BOARD (by J. Anderson):

This matter comes before the Board upon a Motion for Reconsideration, filed on April 13, 1990, and a Motion to Substitute Affidavit, filed on April 18, 1990, by the City of East Moline ("East Moline"). In its Motion for Reconsideration East Moline requested the Board to reconsider its March 8, 1990 Opinion and Order denying site-specific relief. In its Motion to Substitute Affidavit, East Moline requested the Board to substitute the original affidavit of Mr. James E. Huff that was attached to the motion, for the copy of the affidavit that was filed with the Motion for Reconsideration. The Illinois Environmental Protection Agency ("Agency") filed a response to East Moline's Motion for Reconsideration on April 26, 1990. The Board grants East Moline's motions; however, with regard to the Motion for Reconsideration, the Board declines to grant the requested relief.

In support of its Motion for Reconsideration, East Moline argues that the Board misapprehended its intent and evaluated its site-specific proposal according to improper standards in that it premised its decision in large part on the following determinations: (1) that East Moline's discharge presents a serious risk to the ditch, (2) that the record contained insufficient information regarding East Moline's proposal to bypass the ditch and discharge directly to the Mississippi River, (3) that the record contained insufficient information to distinguish East Moline from other communities subject to technology-based standards, (4) that the concepts espoused by ORSANCO represent a broad departure from technology-based standards that must be addressed in a general rulemaking rather than through a site-specific proceeding, and (5) that East Moline failed to demonstrate that the regulations from which it sought relief were not economically reasonable.

In response, the Agency argues that the Board should not grant the motion because East Moline has not provided a proper basis for it as is required by 35 Ill. Adm. Code 101.301(b). The Agency also argues that the Board did not misapprehend East Moline's intent and did evaluate the proposal according to proper standards.

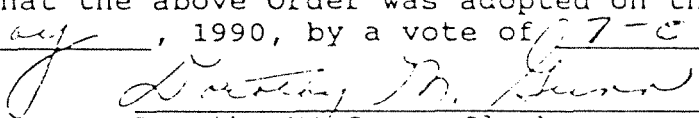
Although the Agency's reliance on 35 Ill. Adm. Code is misplaced because it applies to contested cases rather than site-specific rulemakings, the Board agrees with the Agency's other arguments. Specifically, the Board concludes that it did not misapprehend East Moline's intent, but recognized the proposal for what it was; a proposal for direct discharge. As for East Moline's argument that the Board failed to evaluate the proposal according to proper standards, Section 27 of the Illinois Environmental Protection Act provides five factors that the Board must consider when it evaluates a proposal for site-specific relief; existing physical conditions, character of the area involved, nature of the receiving body of water, technical feasibility, and economic reasonableness. The Board fails to see how it failed to evaluate East Moline's proposal according to proper standards when it addressed each of the foregoing factors in its Opinion.

The inclusion of Mr. Huff's affidavit with the Motion for Reconsideration does not persuade the Board to revisit this matter. We must first emphasize that the record in this proceeding has been closed for some time and that we have made our decision based on that record. There is no allegation in the Motion for Reconsideration that the calculations contained in the affidavit could not have been presented at hearing. The Board will not act lightly and reopen a proceeding to consider an affidavit, submitted after the close of record, to the extent that it purports to present "new information", absent a compelling reason as to why such information could not have been presented before the close of the record. In any event, the information presented in the affidavit is not of a nature to persuade the Board that it erred in its determination.

The Board therefore grants East Moline's motions but, with regard to the Motion for Reconsideration, declines to grant the relief requested.

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 10th day of May, 1990, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board