

ILLINOIS POLLUTION CONTROL BOARD
February 23, 1989

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

ORDER OF THE BOARD (by J. Anderson):

Section 27(a) of the Environmental Protection Act ("Act") has recently been amended by P.A. 85-1048 to give the Board exclusive authority in deciding whether an EcIS should be performed for a rulemaking. Since that change became effective January 1, 1989, Resolution 89-1 sets forth the procedure that the Board will utilize for rulemakings which were filed prior to 1989 and for which an EcIS determination had not been made by the Department of Energy and Natural Resources ("DENR"). In part, the amendments to the Act provides:

[T]he Board shall determine whether an economic impact study should be conducted. The Board shall reach its decision based on its assessment of the potential economic impact of the rule, the potential for consideration of the economic impact absent such a study, the extent, if any, to which the Board is free under the statute authorizing the rule to modify the substance of the rule based upon the conclusions of such a study, and any other considerations the Board deems appropriate. The Board may, in addition, identify specific issues to be addressed in the study.

Section 27(a) of the Act. (as amended by P.A. 85-1048)

It is upon these criteria that the Board must make its EcIS determination in this matter.

On October 9, 1987, the City of East Moline ("East Moline") filed a petition with the Board for site specific exception from 35 Ill. Adm. Code 304.124(a), Additional Contaminants. As of January 1, 1989, no EcIS determination had been made in this proceeding. On January 24, 1989, pursuant to RES 89-1, the

Hearing Officer requested comment on the necessity for the preparation of an EcIS in this matter. Comments were filed by East Moline, DENR and the Illinois Environmental Protection Agency ("Agency") on February 17, 1989.

DENR requests the Board determine that the preparation of an EcIS is not necessary in this proceeding. As DENR comments:

The Department of Energy and Natural Resources (DENR) believes that a formal economic impact study is not necessary for the proceeding R87-35. While the petition for a site specific rulemaking was deficient in economic and environmental information, a significant amount of data was entered into the record at the hearing. The economic and environmental information provided at hearing was, for the most part, in response to pre-filed questions by the Department and the Agency.

For a site specific regulatory petition, the burden should be placed on the petitioner to provide adequate economic data and information regarding the environmental impacts and technical feasibility of its proposal. This is necessary so as to allow DENR to conserve its limited budgetary resources for state-wide proceedings or for those exceptional cases where an independent study would be of genuine value to the Board in rendering its decision.

It is the Department's position that a formal study is not warranted in this proceeding in light of the economic and environmental information put into the record at the hearing on February 9, 1989, and the additional information the petitioner agreed to provide at the request of the Board. If the Board determines that additional information is required, the cost and responsibility of gathering that information should be borne by the petitioner.

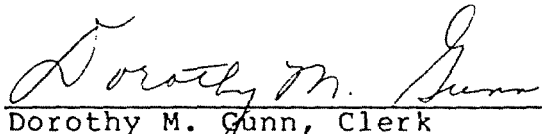
The Agency concurred in DENR's comments and further stated that the economic impact of the proposed rule can be adequately addressed without an EcIS "provided that East Moline properly addresses the economic requirements" (p. 2).

For its part, East Moline urges the Board to order an EcIS, "notwithstanding the fact that it believes that it has submitted sufficient data into the record to allow the Board to make this decision" (p. 2).

After consideration of the above comments and the proposal for rulemaking, the Board presently believes that the presentation of economic information at hearing, together with the requested additional economic information from East Moline, should be sufficient for its consideration of the economic impact of the proposed rule. The Board therefore finds that the preparation of an EcIS need not be conducted in this matter at this time. East Moline's suggestion that an EcIS be required appears, on its face, to be unwarranted. As East Moline notes, the central issue in this case is the economic reasonableness of the general requirement not its technical feasibility; the Board observes that this is precisely why the record in this proceeding already contains much economic information (and will contain more) which is ample to serve as a basis for the Board's determination in this regard.

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 23rd day of February, 1989, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board