

ILLINOIS POLLUTION CONTROL BOARD
December 5, 1986

ILLINOIS POWER COMPANY)
(Wood River Plant),)
)
Petitioner,)
)
v.) PCB 85-84
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

MS. MARILI MCFAWN, SCHIFF HARDIN & WAITE, APPEARED ON BEHALF OF ILLINOIS POWER COMPANY.

MR. RICHARD WARRINGTON, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

OPINION AND ORDER OF THE BOARD (by J. D. Dumelle):

This matter comes before the Board upon a June 18, 1985, petition for review of reissued NPDES Permit No. IL0000701 filed on behalf of the Illinois Power Company (IPC). Hearing was held on July 29, 1986, in Alton, Illinois, at which the parties and no members of the public were in attendance. IPC filed its posthearing brief on October 24, 1986; the Illinois Environmental Protection Agency (Agency) and IPC filed response briefs on November 10 and 14, respectively.

In its petition IPC contested seven conditions of the permit, as reissued on May 20, 1985, on a combination of procedural and "factual" grounds. On the basis of these arguments, IPC requested that the permit be remanded to the Agency.

At hearing (R. at 8) and in its subsequent response brief the Agency admitted to the procedural errors, at least in part, based upon a Board holding in Illinois Power Company (Hennepin Power Plant) v. Illinois Environmental Protection Agency, PCB 85-119, March 20, 1986, and July 11, 1986. The Agency further asserts that this matter must be remanded to it before the admitted procedural errors can be rectified. On this basis, the Agency also requests that the permit be remanded.

Inasmuch as the two parties have no disagreement over the essential action required in this matter, the Board will herein remand the permit to the Agency for reconsideration consistent with the mandated procedures for Agency review of NPDES permits.


IPC also requests that the Board address some of the contested "factual" matters at this time. Among others, IPC requests that the Board rule on the question of whether certain of the Alton plant's wastestreams might be correctly characterized as "internal wastestreams." The Board declines to do so at this time. Consistent with its holdings in Hennepin, and in IPC (Vermilion Power Plant) v. IEPA, PCB 86-12 (Nov. 6, 1986) the Board believes that "rectification of the procedural errors is a necessary prelude in this instance to consideration of any of the other matters of possible dispute." (IPC v. IEPA, slip. op. at 2).

ORDER

The Illinois Environmental Protection Agency's May 20, 1985, reissuance of NPDES permit No. IL0000701 is hereby vacated and this matter is remanded to the Agency for further action consistent with this Opinion and Order.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 5th day of December, 1986 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board