

ILLINOIS POLLUTION CONTROL BOARD  
January 9, 1985

IN RE: SITE-SPECIFIC )  
RULEMAKING FOR THE ) R84-30  
CITY OF EAST PEORIA )

PROPOSED RULE      SECOND NOTICE

OPINION AND ORDER OF THE BOARD (by B. Forcade):

On July 16, 1984, the City of East Peoria ("East Peoria") filed a petition for site-specific rulemaking with the Board. The petition requests a rule which would allow East Peoria's Sewage Treatment Plant No. 1 to change the location of their sewage effluent discharge point from the Illinois River to a small waterway adjacent to the Illinois River, known as Ditch A. In order to facilitate this change, East Peoria seeks relief from the effluent limitation of 35 Ill. Adm. Code 304.120(c), which sets maximum contaminant levels at 10 mg/l of BOD and 12 mg/l of suspended solids to waterways such as Ditch A. East Peoria seeks to have its discharges to Ditch A regulated at 20 mg/l BOD and 25 mg/l of suspended solids; that is, the same limitations that presently apply under Section 304.120(b) to the facility's discharges into the Illinois River.

Hearing was held in this matter on September 10, 1984. Thereafter, the Illinois Department of Energy and Natural Resources filed a "Negative Declaration" of economic impact on November 29, 1984. The Economic Technical Advisory Committee concurred on January 23, 1985. The Board proposed the site-specific rule on June 13, 1985. First notice of the rulemaking was published at 9 Ill. Reg. 12579 on August 16, 1985. The first notice comment period expired on September 30, 1985. Only one comment was received, from the Illinois Environmental Protection Agency ("Agency"), which opposes the proposed rulemaking.

In its first notice opinion, the Board found the environmental impact of the change in discharge location to be minimal. However, the Board did note that East Peoria would save approximately \$15,000 in operating costs per year if the discharge location was changed. Primarily, the Board focused on the environmental impacts on both Ditch A and an adjacent ditch, Main Ditch. The Board studied chemical analyses and biological observation data that were supplied by East Peoria. While

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The Board wishes to express its gratitude to Ms. Marili McFawn for acting as Hearing Officer and Ms. Ginger Carlson for her assistance in drafting this Opinion and Order.

admittedly sparse, the data did not reveal any anticipated adverse environmental impact to Ditch A should the discharge location be changed. In addition, East Peoria has demonstrated that some aspects of the change will be environmentally beneficial in that stagnation and the likelihood of complete freezing in winter would be reduced. The Board relied on data submitted at the public hearing during which East Peoria established that changing the discharge would produce several beneficial environmental impacts to Ditch A and Main Ditch:

1. Reduced freezing in winter;
2. Reduced suspended solids concentrations;
3. Increased dissolved oxygen concentration;
4. Increased flows which will improve scouring, reduce stagnation and reduce algal growth (R. 23-24).

The record has no indication of any harmful or adverse environmental impact. It appears that the overall environmental condition in the area will substantially improve with little or no risk of harm. Furthermore, East Peoria appears to be willing to bear the consequences should water quality standards be violated.

The Board also focused on the unique physical setting and set of circumstances presented here. The receiving waters are best described as a long, narrow man-made pond rather than a stream. There is no connection with the Illinois River without going through pumps. In addition, the ditch has little, if any recreational value and its utility to fish and wildlife is extremely limited. Therefore, given the nature of the receiving waters and the unlikelihood of environmental harm, the Board granted the relief requested by East Peoria.

The comments submitted by the Agency stress caution and advise the Board to withhold a decision until extensive environmental impact data can be collected. The Agency cites a lack of factual support for the Board's determination. The comments allege that the evidence submitted to the Board fails to support East Peoria's claims of environmental benefits which would result from the discharge change. In addition, the Agency maintains that much of the evidence, since it was not collected over an extended time period, is too speculative; especially the evidence regarding stagnation and winter freezing. Finally, the Agency maintains that since the economic impact is slight, there is no reason for the Board to decide this matter prior to extensive data collection.

The Agency is correct that East Peoria has not submitted evidence to the Board which thoroughly and completely quantifies the environmental impact which would result. However, the

evidence that was presented to the Board indicates only beneficial results, not adverse results, and is sufficient to allow the Board to reasonably conclude that the environmental impact resulting from the discharge change would be beneficial. A regulation will be deemed valid unless shown to be arbitrary, capricious, unreasonable or otherwise not in accordance with the law. Commonwealth Edison Company v. Pollution Control Board 25 Ill. App. 3d 271, 323 N.E. 2d 84,90-91 (1st Dist. 1974). Here, all of the evidence before the Board is that the change in discharge location will improve water quality in Ditch A and Main Ditch as measured by the common pollution indicators (dissolved oxygen, suspended solids, stagnation, algae). The Agency has presented no evidence to the contrary, nor has it shown inaccuracies in the testing or calculations presented by East Peoria in support of the rule change. While the record is limited, it is sufficient to allow the Board to reasonably conclude that the discharge change would be beneficial to the environment.

The Agency has alleged in its comments that the Board is consciously disregarding the issue of likely water quality violations. Contrary to the Agency's allegations, the Board has considered this issue but has not found any evidence within the confines of the record which would indicate a possible water quality degradation. All of the evidence indicates that only beneficial changes would result.

The evidence and the expert opinion relied upon by the Board were properly collected and well-reasoned. Chemical data, as well as biological observation data were collected by a biologist and were relied upon by him in making his analysis regarding Ditch A (Exhibit 2, pp. 2-8, Appendix B). Testimony on the environmental impact of the discharge location change was based upon these various forms of data and, therefore, was not speculative in nature.

As stated above, after considering the evidence submitted by East Peoria, the Board finds no adverse environmental impact and further finds that some environmental benefits may well derive from the discharge location change. It should also be noted that whereas \$15,000 may be a comparatively insignificant amount in East Peoria's municipal budget, any savings are important to a community which is facing a declining tax base (R. 9-10). Should any adverse environmental impact occur in the future as a result of the discharge change, the problem could be easily remedied by East Peoria; the effluent flow can simply be discharged back into the Illinois River as was originally done by East Peoria.

Given the probable beneficial environmental impact to Ditch A, the Board grants East Peoria's requested relief. The Board does not believe that any harm to the environment or public interest would occur in granting the requested relief. However, in granting this relief, the Board recognizes that water quality

standards will continue to be applicable to Ditch A.

Because of the admitted lack of extensive data in the record regarding the proposed change, the Board includes a few caveats in its decision and order. First, the Board requires East Peoria to monitor five-day biochemical oxygen demand (BOD<sub>5</sub>), Dissolved Oxygen, total suspended solids (TSS) and ammonia nitrogen levels in Ditch A and Main Ditch at periods of once a month for six months prior to the change and once a month for one year subsequent to the change. The monitoring is to be conducted at a total of five locations throughout Ditch A and Main Ditch. Second, the Board will withhold submission of this decision and order to the Joint Committee on Administrative Rules for thirty (30) days to allow the parties to comment on the feasibility of the sampling.

ORDER

The Board hereby adopts the following rule for Second Notice and instructs the Clerk of the Board to submit this rule to the Joint Committee on Administrative Rules thirty days subsequent to the date of this Order:

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE C: WATER POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD

PART 304

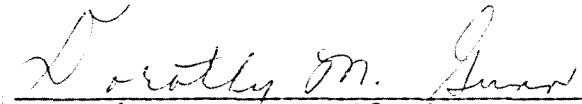
SITE-SPECIFIC RULES AND EXCEPTIONS  
NOT OF GENERAL APPLICABILITY

Section 304.211 City of East Peoria Discharges

- a) This Section applies only to effluent discharges from the City of East Peoria's Sewage Treatment Plant No. 1 into Ditch A in Tazewell County, Illinois.
- b) The provisions of Section 304.120(c) shall not apply to said discharges, provided that said discharges shall not exceed 20 mg/l of five day biochemical oxygen demand (BOD<sub>5</sub>) (STORET number 00310) and 25 mg/l of total suspended solids (STORET number 00530).
- c) The City of East Peoria shall monitor biochemical oxygen demand (BOD<sub>5</sub>), Dissolved Oxygen, total suspended solids (TSS) and ammonia nitrogen levels for periods of once a month for six months prior to the discharge change and once a month for one year subsequent to the discharge change at five (5) locations throughout Ditch A and Main Ditch. This information shall be submitted to the Illinois Environmental Protection Agency quarterly.

IT IS SO ORDERED.

I Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Proposed Rule/Second Notice Opinion and Order was adopted on the 9<sup>th</sup> day of January, 1986, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board