

ILLINOIS POLLUTION CONTROL BOARD
March 4, 1999

IN THE MATTER OF:)
)
REGULATED RECHARGE AREA) R99-19
DESIGNATION, DURANT, WINNEBAGO) (Rulemaking - Water)
COUNTY)

DISSENTING OPINION (by M. McFawn):

I respectfully disagree with the majority of the Board. In response to the petitioner's motion of reconsideration in this proceeding, the majority concludes that Sections 17.2, 17.3 and 17.4 provide a procedure for designating regulated recharge areas in the State. The majority then states that the procedure "included a provision that proposed rules to establish a regulated recharge area come to the Board from the Illinois Environmental Protection Agency," and cites to Section 17.3 of the Act. The effect of this holding is that only the IEPA may propose such a rule. This is where we diverge. Nothing in Section 17.3 or elsewhere in the Act prohibits the Board from considering a rulemaking petition for a regulated recharge area from an individual or other person as defined at Section 3.26 of the Act. Rather, Section 17.4 directs the Board to consider such a proposal under Title VII. Specifically, Section 28 in Title VII requires the Board to conduct hearings on rulemaking proposals properly filed by any person so long as the proposal satisfies certain factors also set forth therein. Notably, Section 17.4(c) of Title IV also provides that nothing therein limits the Board's authority for rulemaking under Title VII.

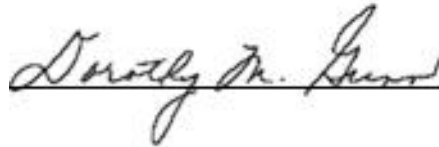
I conclude that nothing in the Act prohibits individuals or other persons as defined in the Act from petitioning the Board to designate by rule a regulated recharge area. While the burden of this type of rulemaking may be very difficult for a "person" other than the Agency, nothing in the Act prohibits an individual, association, political subdivision or any other entity defined as "person" at Section 3.26 of the Act, from filing a regulatory proposal to establish a regulated recharge area. Finally, nothing in Sections 17.2, 17.3 and 17.4 prohibits the Board from adopting such a regulation if the petitioner has satisfied the factors set forth at Section 17.4.

For these reasons, I would grant the motion to reconsider and reverse the Board's ruling of January 7, 1999.

A handwritten signature in cursive script that reads "Marili McFawn". The signature is fluid and extends to the right with a long, sweeping tail.

Marili McFawn
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was submitted on the 9th day of March 1999.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written over a horizontal line and is more compact than the signature above.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board