

ILLINOIS POLLUTION CONTROL BOARD
June 14, 1984

CITIZENS UTILITIES COMPANY OF)	
ILLINOIS,)	
)	
Petitioner,)	
)	
v.)	PCB 83-124
)	
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board upon a Motion for Rehearing and for Oral Argument timely filed on May 23, 1984 by Citizens Utilities Company of Illinois (Citizens). The Environmental Protection Agency's (Agency) Motion to File Response Instanter is granted, although the response is 1 day late.

The Board has considered all of the arguments presented by Citizens and notes that many simply reiterate what has been previously discussed.

Petitioner asserts that an arbitrary or unreasonable hardship would result if it had to comply with the applicable standards by July 2, 1985 and if the water quality standards were revised in the future. This argument was covered in the prior Board Opinion and Order of April 19, 1984. Petitioner states that the Agency has set a hearing for June 20, 1984 and that this is further evidence that standards will be revised. Under the Clean Water Act, 33 U.S.C. § 1313(c), the Agency must review the water quality standards and provide for public comment every three years. The Agency is fulfilling its duty and the fact that a hearing has been set lends no more credibility or urgency to petitioner's argument.

Second, petitioner, asserts that the Board denied the variance extension because it found that petitioner violated a Board Order. The variance extension was denied because of the failure of petitioner to show arbitrary or unreasonable hardship, not because the Board stated in its Opinion that petitioner had violated a prior Board Order. Concomitant with this argument is that the Board's action has violated constitutional due process guarantees citing Citizens Utilities v. Pollution Control Board, 9 Ill. App. 3d 158 (2d Dist. 1972).

This case involved a Board Order imposing a monetary penalty as a condition to granting a variance, which is not the situation here. Petitioner has been afforded due process.

Third, petitioner repeats the argument that the delays in R81-19 were not within its control and that the compliance date should be extended by at least 2 years. It must be remembered that regulatory and variance proceedings are separate mechanisms. Although petitioner chose the site-specific route, the variance provisions still control and petitioner must comply by July 2, 1985.

The fourth argument concerning Board jurisdiction over the United States Geological Service was disposed of in the prior Board Order.

The petitioner has failed to provide the board with sufficient evidence to warrant rehearing. Therefore, the Board hereby denies the Motion for Rehearing and for Oral Argument.

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 14th day of June, 1984 by a vote of 6-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board