

ILLINOIS POLLUTION CONTROL BOARD

March 28, 1974

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY)
PETITIONER)
)
)
v.) PCB 73-384
)
)
ENVIRONMENTAL PROTECTION AGENCY)
RESPONDENT)
)

THOMAS COCHRAN, ATTORNEY, OF SORLING, CATRON & HARDIN in behalf of
CENTRAL ILLINOIS PUBLIC SERVICE COMPANY
DELBERT HASCHEMEYER, ASSISTANT ATTORNEY GENERAL, in behalf of the
ENVIRONMENTAL PROTECTION AGENCY

OPINION AND ORDER OF THE BOARD (by Mr. Marder)

This case comes to the Board on Petition of Central Illinois Public Service Company pursuant to Sec. 40 of the Environmental Protection Act and Rule 502 of the Procedural Rules, to contest the denial of an operating permit by the Environmental Protection Agency for its power generating station at Coffeen, Illinois, filed September 6, 1973. By letter dated October 8, 1973, Petitioner waived the 90 day time limit for Board action, as required by Sec. 40 of the Environmental Protection Act.

The Agency, on November 28, 1973, filed an answer to the Petition, requesting the Board to affirm the Agency's denial of the permit.

Hearing was held on December 7, 1973, in Coffeen, Illinois.

The parties have submitted a joint stipulation of facts which the Board accepts and summarizes as follows:

1. Central Illinois Public Service Company (hereinafter referred to as CIPS) is a corporation duly organized and operating under the laws of the State of Illinois. It is engaged in the business of generating and distributing electricity for sale in the State of Illinois and is a public utility within the meaning of the laws of the State of Illinois.

2. The Illinois Commerce Commission in Docket H-48818 ordered on July 24, 1962, that CIPS be granted a certificate of public convenience and necessity for the construction, operation and maintenance of a steam electric generating plant and appurtenances, including an impounding dam and a water accumulation area to be used by the plant, located

about two miles southwest of the village of Coffeen.

3. The Department of Public Works and Buildings of the State of Illinois issued Permit #9894 on September 17, 1962, allowing CIPS to build an earthen dam, spillway, and appurtenances on McDavid Branch of the East Fork of Shoal Creek, about 3 1/2 miles south of Coffeen.

4. On June 25, 1972, CIPS applied to the U.S. Corps of Engineers, application #IL LMS OXL 2 000044 for a discharge permit. On August 8, 1972, CIPS furnished the U.S. Environmental Protection Agency requested information.

5. CIPS purchased 3400 acres on which to construct the power plant and impound waters for cooling purposes. This impoundment became Coffeen Lake.

6. The plant was built near coal deposits so that it could be supplied with coal from an on-site mine.

7. Construction on the installation began on August 13, 1962. There are two generating units on the site. Unit #1 has a rated output of 330,000 kw and came on stream December 20, 1965, and Unit #2 has a rated capacity of 550,000 kw and came on stream Sept. 26, 1972.

8. Water is pumped from the west arm of Coffeen Lake and used to cool steam, and then the cooling water is returned to the east arm of the lake after absorbing heat in the condenser. Cooling of this water is done basically by evaporation and conduction.

9. Ash, a product of combustion in the boilers, is carried by water to an ash storage lagoon and after holding there, where the ash settles out, the water passes on to the lake.

10. Domestic waste from the plant is treated by a tertiary treatment plant and then discharged into the lake. The treatment plant was built pursuant to a permit issued by the Sanitary Water Board, such permit being known as Permit #1963-FA-482, issued October 3, 1963.

11. The lake has been closed to the public for its entire existence except for a period from Sept. 24, 1966, to July 1, 1969, when part of the west shoreline of the lake was leased to the Department of Conservation, State of Illinois, for recreational purposes.

12. The point on the dam where the lake can overflow it is 590 feet above mean sea level.

CIPS alleges that it was wrongfully denied an operating permit for its plant in Coffeen by the Agency. CIPS alleges in its petition that the Agency arbitrarily and unreasonably denied the permit because the Agency believed that Coffeen Lake is subject to Chapter 3 of our Rules and Regulations. CIPS claims that the only discharge covered by Chapter 3 is that from the lake to the east branch of Shoal Creek.

The Agency denied the permit because CIPS did not supply in its application information as to the amounts and types of discharges to Coffeen Lake from the plant (Ex. B CIPS Petition). Without this data, the Agency refused to issue a permit because it could not determine compliance with the applicable Chapter 3 regulations.

The question before the Board is if the Agency wrongfully denied CIPS a permit because CIPS did not supply effluent data for its discharges from the plant to the lake. The answer to this question requires the answer to a second question, "Is Coffeen Lake a water of the state?" If it is, then the Chapter 3 regulations apply to discharges to the lake and the Agency is correct in its denial.

Recently the Board has been faced with the question of what "waters of the state" are (Alton Box Board Co. v. Environmental Protection Agency, PCB 73-140; Allied Chemical v. Environmental Protection Agency, PCB 73-382). The Board feels that this question is of such a variable nature that no hard and fast rule can be set down, and so the Board shall decide the case on its facts, and such other cases in the future will be decided on the merits of each case.

Sec. 12 (a) of the Environmental Protection Act states that, "No person shall cause or threaten or allow the discharge of any contaminants into the environment in any state so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this act."

Sec. 3 (o) of the Environmental Protection Act and Rule 104 of Chapter 3, Water Pollution Regulations of Illinois, further define "waters" as "all (emphasis added) accumulations of water, surface and underground, natural and artificial (emphasis added), public and private (emphasis added), or parts thereof which are wholly or partially within, flow through, or border upon this state."

The McDavid Branch of the east fork of Shoal Creek fits the definition of a water. It is a natural accumulation of water that flows through the State of Illinois. Though it does not flow for the entire year, testimony by Richard Bergstrom of Sargent and Lundy Engineers stated that though the stream is not and was not navigable when CIPS built the lake (R. 24), before that time he did notice there was aquatic-based life in the stream (R. 37). Coffeen Lake also fits the definition of "waters" under the Act. It is an accumulation of water, which is on the surface; it is artificial and private, and it is wholly within the State. This interpretation is very broad and would lead to the conclusion that all impoundments of water in the state are "waters" under the Act. The Board does not so find. This would be too broad a stroke to take.

The Board must look to the purpose of the Chapter 3 Regulations to determine what impoundments are to be covered. Rule 203, General Standards, states that one of the purposes of the standards is to protect

the state's waters for aquatic life. As such McDavid Creek was and is a water of the state to be protected. It has its own natural aquatic-based life, and as such falls under Chapter 3.

Coffeen Lake was built by damming up McDavid Branch. As such it is an impoundment of the stream. Part of the water in the lake comes from McDavid Branch; the rest basically is water that would go to McDavid Branch from its watershed.

In substance, Coffeen Lake is a holding basin for the waters of McDavid Branch and is really a part of the stream. As such the Board finds Coffeen Lake to be waters as defined in Sec. 3 (o) of the Environmental Protection Act and Rule 104 of Chapter 3. Effluent to be discharged into Coffeen Lake must meet the criteria as set forth in Chapter 3, in order to protect the natural aquatic life of the McDavid Branch that would then have passed to Shoal Creek, had Coffeen Lake not been built.

The Board, in League of Women Voters v. North Shore Sanitary District, PCB 71-7, 12,13,14, has held that a protected water of the state (i.e., Lake Michigan) cannot be used as a treatment works, as the North Shore Sanitary District was actually doing when bypassing raw sewage. This case is distinguishable as to the fact that Coffeen Lake is a private lake, but it is still a protected water of the state, and under jurisdiction of the Board as to discharges.

The Legislature has determined that it is in the public interest for the health, safety, and general welfare of the people of the State of Illinois to restrict discharges of contaminants into "waters" of the State (Sec. 2 Environmental Protection Act). Due process has been afforded all persons in the state by the public hearing procedure mandated in all regulatory actions taken by the Board (Sec. 28 Environmental Protection Act). As such, the Board finds that there is no taking of Petitioner's property without due process and that the Board is carrying out the mandate of the Legislature and is acting properly under the police powers of the State to protect the environment for public health and safety purposes. Petitioner may continue to discharge into the lake for the purpose for which the lake was intended, as long as it is done in accordance with the valid regulations the Board has promulgated.

The Agency did not err in denying CIPS a permit if CIPS did not supply effluent data of discharges from its plant to the lake.

The Board finds that this data was not supplied by CIPS to the Agency and so the permit application was properly denied.

The Board must also note that the question of whether Coffeen Lake is being used properly is not at issue. It may well be that the waste streams entering Coffeen Lake are in compliance, and, given this information permit could be granted. It is the opinion of the Board that while it is the right of the Petitioner to use the waters of the state, it is the State's right to insure that such use does not result in degradation.

In passing the Board notes the testimony of Dr. Durham as to his study of aquatic life in the lake. Though interesting, this testimony did not

go to the ultimate question herein decided.

This Opinion constitutes the findings of fact and conclusions of law of the Board.

ORDER

IT IS THE ORDER of the Pollution Control Board that the decision of the Environmental Protection Agency denying an operating permit to Central Illinois Public Service Company for its power generating station near Coffeen, Illinois, is affirmed.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 28th day of March, 1974, by a vote of 5 to 0.

Christan L. Moffett