

ILLINOIS POLLUTION CONTROL BOARD
November 20, 1986

IN THE MATTER OF:)
)
PETITION FOR SITE SPECIFIC) R85-11
EXCEPTION TO EFFLUENT STANDARDS)
FOR THE ILLINOIS-AMERICAN WATER)
COMPANY, EAST ST. LOUIS TREATMENT)
PLANT)

ORDER OF THE BOARD (by R.C. Flemal):

This matter comes before the Board upon the October 28, 1986 motion of the Illinois-American Water Company ("Company") to reopen the record in this proceeding. The Company desires this result so that it might submit additional evidence regarding alternative methods of treating the discharges from its East St. Louis plant.

The Agency filed a response to the Company's motion on November 19, 1986. The Agency states that it "sees no reason" to reopen the record, and that it intends to implement the Board's September 25, 1986 Opinion and Order in this matter.

The Company contends that the compliance method it had intended to utilize in the absence of site-specific relief, on-site treatment using mechanical centrifuges, is "significantly less feasible, both economically and technologically, than originally anticipated". A witness for the Company previously testified at hearing in this matter that this treatment method would entail \$8.5 million in capital costs and \$150,000 per year in operating expenses. The Company presently asserts, however, that the capital costs associated with this method would approximate \$12.4 million. Additionally, the Company believes that recent industry experience with centrifuges has been sufficiently discouraging to question whether the treatment system would even work properly in this application.

As a consequence of these discoveries, the Company intends to seek Board consideration of an alternative treatment method which will include the construction of settling lagoons. The Company believes that the alternative treatment method is economically reasonable and technologically feasible, that it would save customers millions of dollars, and that it offers prospect of improvement in environmental quality.

The Agency argues that the Board's Procedural Rules do not provide, in the context of regulatory proceedings, for motions to the Board for reconsideration or rehearing after a final order of the Board has issued. The Agency believes that, rather, review of final orders in regulatory proceedings must occur in the context of judicial review.

The Board notes that contrary to the Agency's assertion, motions for rehearing or reconsideration may appropriately be considered by the Board in rulemaking proceedings. The authority to hear such motions is implicit in the general rulemaking authority delegated to the Board by the Act.

However, the allowance of rehearing is a matter of Board discretion and should not be lightly granted due to the potential for abuse. If the Board were to routinely grant motions for rehearing, petitioners might be encouraged to file an initial proposal providing the least amount of environmental protection; then, upon denial, propose a more stringent approach, and upon a second denial, propose an even more stringent approach. Thus, the rehearing process could become a form of negotiation. Such is not the intent of the Illinois Environmental Protection Act, and that process runs seriously counter to considerations of administrative convenience.

In this case, the Board does not believe that the Company has intended to abuse the regulatory process. Therefore, while the Board will scrutinize requests for rehearing in order to protect the integrity of the regulatory process, in this case the Board concludes that the record in this matter will be reopened. The Company therefore may submit a detailed treatment proposal for Board consideration.

The Board wishes to note that in the record to date the Company's justification for relief addressed only the options of adherence to the present effluent limitations versus no limitations at all. Under these circumstances, the Board found in favor of adherence to the present limitations. It would appear that the Company now wishes to supplement the record and thus request the Board to weigh an intermediate option (e.g. a reduction in waste load, but not necessarily a reduction sufficient to allow full compliance with current effluent standards). Should such, in fact, be true, the Company may additionally wish to propose effluent limitations as alternatives to those found at 35 Ill. Adm. Code 304.124.

The Company's motion is granted. The revised proposal shall be submitted to the Board within 60 days. After Board receipt of the proposal, the Hearing Officer may set this matter for additional hearing.

IT IS SO ORDERED.

Board member B. Forcade dissents.

Board Member J. Marlin concurs.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 204 day of November, 1986, by a vote of 5-1.

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