

ILLINOIS POLLUTION CONTROL BOARD
March 19, 1998

ST. CLAIR PROPERTIES)	
DEVELOPMENT, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 98-72
)	(Permit Appeal - Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. Yi):

This matter is before the Board on an amended petition for hearing filed by St. Clair Properties Development, Inc., (St. Clair) on December 22, 1997. On January 8, 1998, the Board accepted this matter for hearing. On January 26, 1998, the Board received a limited appearance and motion to dismiss filed by the Illinois Environmental Protection Agency (Agency). The Board has received no response to this motion. For the reasons that follow, the motion to dismiss is denied.

BACKGROUND

The petition for hearing seeks review of a final Agency decision denying St. Clair's application for a sewer extension permit. In the petition, St. Clair requests the Board to reverse the decision of the Agency denying the permit application. The Agency decision asserts that Sections 12 and 39 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/12 and 39 (1994)) prohibit the Agency from issuing a permit for any facility which would threaten, cause or allow the discharge of contaminants which might cause or tend to cause water pollution in Illinois. The Agency finds that Section 39 of the Act requires an applicant to submit proof to the Agency that the proposed facility will not cause a violation of the Act or regulations promulgated thereunder.

The Agency decision is contained in an October 15, 1997, denial letter that gives three reasons why the provisions of the Act and regulations will not be met. St. Clair addresses only one point in the petition for review. As noted in the October 15, 1997, letter, the Agency denied the permit, *inter alia*, because it found that the proposed sewer extension was located outside of the American Bottoms Regional Wastewater Treatment Facility Planning Area (American Bottoms FPA). The Agency maintains that the proposed extension is located within the Granite City Wastewater Treatment Facility Planning Area (Granite City FPA). In the October 15, 1997, letter, the Agency notes that the Southwestern Illinois Planning Commission (SIPC) found the location of the proposed extension conflicts with the approved Water Quality Management Plan (WQMP) for the area. The Agency states that the issuance of the permit

would conflict with 35 Ill. Adm. Code 351.501. Therefore, the Agency cannot issue a permit until the American Bottoms FPA boundaries are revised to include this proposed extension or the proposed extension is designed to be tributary to the Granite City FPA.

In its petition, St. Clair argues that their property, the location of the proposed sewer extension, is not located within the Granite City FPA, but is located within the American Bottoms FPA. St. Clair asserts that the Agency's determination is erroneous because it was premised on an incorrect map designation rather than a review of the existing sewer lines adjacent to St. Clair's property. Thus, the Agency's determination that the proposed sewer extension will threaten, cause, or allow the discharge of contaminants which might cause or tend to cause water pollution in Illinois is wrong.

MOTION TO DISMISS

In the motion to dismiss, the Agency argues that the Board is without jurisdiction to hear this appeal because the Board does not have the authority to review decisions by the Agency on the WQMP. The Agency asserts that the petition for review raises only the issue of conflict with the WQMP and alleges a map error. The Agency states that this non-conformance to the WQMP is denial point #3 of the October 15, 1997, denial letter. The Agency maintains that the issues raised by St. Clair are arguments for the revision to the WQMP and do not challenge the validity of the permit in regard to the requirements of the Act or the regulations. Thus, because the Board only has authority to review final determinations pursuant to the Act or Board regulations that involve a subject the Board is authorized to regulate, the Board is without jurisdiction in this matter. The Agency cites Citizens Utilities Company and Village of Plainfield v. Illinois EPA and Village of Bolingbrook (June 17, 1998), PCB 93-101, aff'd on other grounds, 265 Ill. App. 3d 773, 639 N.E.2d 1306 (3rd Dist. 1994). As noted earlier, St. Clair did not respond to the Agency's motion to dismiss.

The Board does not have the authority to review the WQMP or any amendments thereto. See Jurcak v. Illinois EPA, 161 Ill. App. 3d 48, 513 N.E.2d 1007 (1st Dist. 1987); Citizens Utilities Company, PCB 93-101; Calvary Temple Church v. Illinois EPA (April 26, 1989), PCB 90-3. In Jurcak, the appellate court found that the Board had the authority to review included conditions of an NPDES permit, but that the Board did not have authority to review the WQMP or any Agency decision amending the WQMP. Jurcak, 161 Ill. App. 3d at 51. The Board addressed this issue in Calvary Temple, and found that, pursuant to Section 40 of the Act, it has the jurisdiction and the statutory duty, subject to the same limitations in Jurcak, to review a permit denial. Calvary Temple, PCB 90-3.

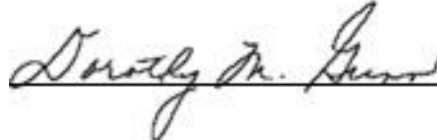
In the instant case, the Board is not requested to review the WQMP or any Agency decision amending the WQMP. This case is distinguishable from Citizens Utilities. In Citizens Utilities, the only issues concern the Agency's approval of the petitioner's application to revise the WQMP. Here, there is no such revision, or application for revision, of the WQMP at issue. In Citizens Utilities, the Board found that it lacked the jurisdiction to review provisions of the WQMP. PCB 93-100, slip op. at 6. As stated, the Board is not requested to, nor will it, review the WQMP in this proceeding. Instead, the Board will review the decision not to grant the permit as is its statutory obligation. If, during this process, issues

requiring review of the WQMP arise, the Board will further address the situation at that time. The Agency's motion to dismiss is hereby denied.

IT IS SO ORDERED.

Board Member K.M. Hennessey abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 19th day of March 1998, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board