

ILLINOIS POLLUTION CONTROL BOARD
December 17, 1998

IN THE MATTER OF:)
)
PERMITTING PROCEDURES FOR THE) R99-8
LAKE MICHIGAN BASIN 35 Ill. Adm.) (Rulemaking - Water)
Code 301, 309.141)

ORDER OF THE BOARD (by G.T. Girard, C.A. Manning, and N.J. Melas):

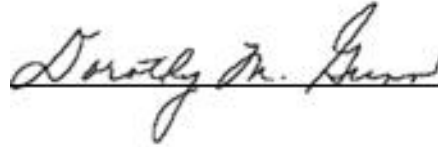
On September 29, 1998, the Illinois Environmental Regulatory Group (IERG) filed a motion to dismiss this rulemaking. On November 17, 1998, the Illinois Attorney General (Attorney General) filed a response to the IERG motion. On November 18, 1998, the Chemical Industry Council filed a comment supporting IERG's motion. And on November 19, 1998, the Illinois Environmental Protection Agency (Agency) filed a response to the IERG motion. On November 30, 1998, IERG filed a reply to the responses. Also, at hearing on December 8, 1998, IERG asked that the Board rule on the outstanding motion prior to January 14, 1999, the date set by the hearing officer for posthearing comments to be filed.

IERG argues that the proposal before the Board is in effect a request for declaratory judgment from the Board regarding the Agency's rulemaking authority. IERG maintains that the Board has no authority in this proceeding to determine the Agency's rulemaking authority. Both the Agency and the Attorney General disagree with IERG's motion. Both argue that the Board has before it a substantive rulemaking proposal which the Board has the authority to adopt.

After thorough consideration, the Board denies IERG's motion to dismiss. The Agency's rulemaking proposal contains proposed amendments to the Board's water rules that will clarify implementation of the federally required Great Lakes Initiative. IERG has not argued that the Board cannot adopt amendments to its rules; rather, IERG has argued that the Board cannot decide on the Agency's authority to adopt rules in this proceeding. The Board does not need to decide the Agency's authority for rulemaking in this proceeding. Section 13 of the Environmental Protection Act (415 ILCS 5/13 (1996)) clearly grants the Board the authority to adopt rules. Thus, the Board can adopt or not adopt the proposed rules on the merits based on the Board's own authority to adopt the rules proposed by the Agency. Therefore, the Board denies IERG's motion to dismiss.

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 17th day of December 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