

ILLINOIS POLLUTION CONTROL BOARD
May 21, 1992

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	PCB 90-63
)	(Enforcement)
v.)	
)	
CITY OF EAST MOLINE,)	
)	
Respondent.)	

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

On May 11, 1992 respondent, City of East Moline (East Moline), filed a motion to dismiss or stay the scheduling of hearing in this matter (Motion). On May 18, 1992 complainant, the Illinois Environmental Protection Agency (Agency), filed a memorandum in opposition to the motion (Response)¹.

At issue here is whether new Section 28.3 of the Illinois Environmental Protection Act (Act), adopted subsequent to filing of the complaint, authorizes or warrants either a dismissal or stay of this enforcement proceeding. Section 28.3 of the Act contains provisions for adjusted standard procedures specifically for public water supplies using the Mississippi or Ohio Rivers as a raw water source. For the purposes of the instant matter, the operative portion is found at Section 28.3(g):

Application of otherwise applicable discharge limitations to discharges subject to this Section shall be held in abeyance pending Board action for those petitioners pursuing an adjusted standard as long as they have adhered to the filing times in this Section and are making timely and appropriate progress in seeking an adjusted standard. Petitioners must take all reasonable steps to minimize discharge quantities and adverse environmental impacts for the interim operating period during pursuit of an adjusted standard. In no instances shall interim operating procedures be relaxed from previously demonstrated and generally attainable performance levels.

¹ The Response is incorrectly captioned with docket number PCB 90-69.

A joint petition of East Moline and the Agency was filed pursuant to this section on December 27, 1991².

East Moline argues that the enforcement action should be stayed (or dismiss with leave to reinstate) since the Act states the application of the discharge limits is "held in abeyance pending Board action". (Motion at 6.) The Agency argues that the enforcement action should not be stayed because Section 28.3 does not have retroactive application, and that this enforcement action was filed before the filing of the petition for adjusted standard. (Response at 5-6.)

The language of Section 28.3(g) is clear on its face that the discharge limits are held in abeyance during the pendency of the adjusted standard proceeding before the Board. The Agency is correct in its observation that Section 28.3(g) does not specify that the limits are held in abeyance at other times. Accordingly, the Board finds that the enforcement action is not automatically stayed pending Board action on the adjusted standard, where the complaint applies to the time period prior to the filing of the adjusted standard.

The Board observes, as the Agency also recognizes (Response at 5), that the issue of any prospective remedy involved in this enforcement action would likely be interwoven with the matters to be resolved in the adjusted standard proceeding. Thus, it may be necessary to reserve ruling on some portion of a remedy, if any, until the adjusted standard is resolved. However, the Board does not see this as reason in itself for this enforcement action to continue to lay fallow.

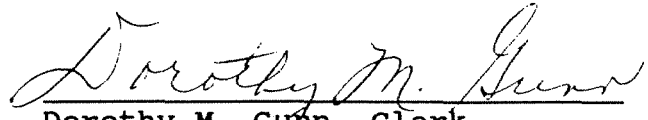
East Moline's alternative motion to dismiss with leave to refile is apparently predicated in part on perceived staleness of the complaint. However, any issue of staleness is best addressed at the time of decision on the merits. Similarly, the Board notes that both East Moline in the Motion and the Agency in the Response present arguments regarding the merits of the several counts cited in the complaint. Judgement on these matters is also reserved for the proper time.

East Moline's motion to stay or in the alternative to dismiss this action with leave to refile is denied. The cause shall proceed in accordance with the findings in this order and the directives previously given in this matter.

IT IS SO ORDERED.

² In the Matter of: Petition of the City of East Moline and Illinois Environmental Protection Agency for Adjusted Standard from 35 Ill. Adm. Code, AS91-9

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 21st day of May, 1992 by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board