

ILLINOIS POLLUTION CONTROL BOARD
February 28, 1991

IN THE MATTER OF:)
)
GROUNDWATER PROTECTION: REGULATIONS)
OF EXISTING AND NEW ACTIVITIES WITHIN) R89-5
SETBACK ZONES AND REGULATED RECHARGE) (Rulemaking)
AREAS (35 ILL. ADM. CODE 601, 615, 616,)
AND 617) (GROUNDWATER TECHNICAL)
STANDARDS))

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

On February 11, 1991, the McHenry County Defenders, Citizens for a Better Environment, and the Illinois Chapter of the Sierra Club ("Defenders") filed a motion with the Board to reissue First Notice and take other steps to expedite completion of this proceeding. No replies have been received by the Board, although on February 6, 1991, the Illinois Environmental Regulatory Group ("IERG") filed a response to a similar request made by the Defenders to the Hearing Officer and Attending Board Member¹.

The Board denies the motion, insofar as it requests immediate reissuance of a First Notice Opinion and Order. Instead, the Board will expedite this proceeding in the manner outlined below.

As in PC #18, the Defenders suggest courses of action on how to proceed with the docket at this point, including sending the rules as proposed at First Notice to a second First Notice. The Hearing Officer in this proceeding recently received information by telephone that the EcIS is expected to be filed by the first week of March. Although in PC #18 Defenders advocate proceeding without the EcIS, the Board believes that it would be best to enter that information into the record and hold the additional required hearing on the EcIS (See Section 27(b) of the Environmental Protection Act), before proceeding to a second First Notice. If the Board went to First Notice now, and then proceeded with additional EcIS and merit hearings which pointed out the necessity of making major changes to the proposal, a third First Notice would be required. The Board would like to avoid making that additional step, a step which would unacceptably delay this proceeding.

¹ That request was docketed as Public Comment #18 ("PC #18") and is also considered by the Board here.

The Board believes this course of action would save State resources by not ignoring a report which cost many State dollars as well as gaining the prospect of economic information for the record. This is especially true with the EcIS so soon to be filed.

Therefore, by separate Hearing Officer Order of this date, a hearing is set on the EcIS and any additional merit issues for April 3, 1991. This should allow for proper attention to be given to any EcIS filed by March 15, 1991; should the EcIS not be filed by this date, the Board will then re-entertain the possibility of proceeding to a second First Notice without it.

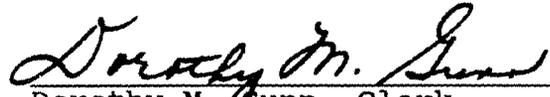
The Hearing Officer is instructed to schedule any subsequent comment periods within a tight timeframe, but in accordance with the mandatory comment requirements of the Administrative Procedure Act ("APA"). It is worth noting that the APA requires a minimum 45-day comment period after the publication of proposed rules in the Illinois Register (Ill. Rev. Stat. 1989 ch 127, par. 1005.01). Therefore, it is impossible to set tighter time frames than that, as appears to be suggested by PC #18 and the instant motion.

The Board seeks to have the entire R89-5 rules adopted as expeditiously as possible. Splitting some subparts and putting them in separate dockets as Defenders suggest would not necessarily gain time, and, in fact, could require more time due to the multiple processing necessary than if the entirety of the proposal were adopted at once. The Board also seeks to avoid piecemeal adoption of these regulations which could lead to confusion in implementation and enforcement. Also it is not clear that Subpart B could be so easily split off without other parts of the regulation being affected.

The Board, like the Defenders, is concerned about the rate of progress of this proceeding and of the complementary rulemaking underway in R89-14; the Board takes all of its decision deadlines seriously. Nevertheless, the Board would venture that the pace of these two rulemakings has been controlled not by a lack of diligence upon the part of the many persons involved in them, but rather by an extremely high level of diligence. So many have been the conferences, proposals, hearings, comments, replies, and deliberations that it is unlikely that anyone could have correctly forecast the time necessary to sequence and otherwise properly accommodate them. The Board believes that the benefit of this high level of interest and participation will be a higher quality set of rules than would otherwise have resulted. For this reason the Board has been willing to accommodate first to the time demands of the proceedings, rather than to the demands of the clock. The Board further believes that, at least for now, this strategy should not be set aside.

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 28th day of February, 1991, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board