ILLINOIS POLLUTION CONTROL BOARD
July 3, 1990

IN THE MATTER OF:	)	
PROPOSED SITE SPECIFIC WATER POLLUTION RULES AND REGULATIONS APPLICABLE TO CITIZENS UTILITIES COMPANY OF ILLINOIS DISCHARGE TO LILY CACHE CREEK	)	R81-19 (Rulemaking)

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

This case comes before the Board on remand from the appellate court. On June 12, 1981 Citizens Utilities Company (Citizens) filed a petition for site-specific regulatory relief which was accepted by the Board and authorized for hearing and publication on June 25, 1981. Five merit hearings were held on October 26, 1981; November 12 and 13, 1981;and January 14 and 15, 1982. On November 23, 1982 the Village of Bolingbrook entered its appearance. On July 14, 1982 the Department of Energy and Natural Resources (DENR) transmitted to the Board copies of its economic study entitled The Economic Impact of Proposed Regulation R81-19 for Site-Specific Water Pollution Rules Applicable to Citizens Utilities Company Discharge to Lily Cache Creek (Ex. 23). An economic impact hearing was held to consider that study on October 20, 1982. Final comments were received by the Board on December 3, 1982.

In its original petition, Citizens requested that the effluent discharge standards be relaxed to 20 mg/l for BOD_5, 25 mg/l for TSS and up to 15 mg/l for NH_3-N. The general-use standards from which Citizens seeks relief require 10 mg/l for BOD, 12 mg/l for TSS and a standard of 1.5 mg/l for NH_3-N (except during the months of November through March when the standard is 1.5-4.0 mg/l). On May 5, 1983, the Board issued its final Opinion and Order dismissing Citizens proposal for site specific relief. Citizens appealed the Board's decision and the Appellate Court remanded the action to the Board on June 17, 1985 with the mandate that the Board make an economic determination of the "cost/benefit" factor pursuant to Ill. Rev. Stat. Chapter 111-1/2 1027(b). 134 Ill. App. 3d at 311. Accordingly, economic impact hearings were held January 28, 1986 and on November 17, 1987 in order to further supplement the record so that the Board could make a decision in regards to economic impact.

As far as our decision on remand is concerned, the vast majority of the Board's May 5, 1983 Opinion and Order remains applicable. As a result, the Board feels that the detailed analysis contained therein need not be repeated here. Rather, the Opinion and Order of May 5, 1983 should be taken in conjunction with today's ruling. Therefore, the Board hereby incorporates by reference the entire May 5, 1983 Opinion and

Order with the exception of the last two paragraphs of that portion entitled ECONOMIC REASONABLENESS AND TECHNICAL FEASIBILITY and the last paragraph under that section entitled STREAM USES AND ENVIRONMENTAL IMPACT. The Board also strikes that section entitled BOARD ACTION.

Discussion

Both the Illinois Environmental Protection Agency (IEPA) and Citizens agree upon the scope of the remand. That is, both IEPA and Citizens concur that the Appellate Court remanded the case to the Board because the Board had not made the required findings under Section 27(b) of the Act. This portion of the Act states that the Board has a legal responsibility to make a determination of the economic impact - whether adverse or beneficial - of Citizens' proposed regulations. It is at this juncture that any agreement between the participants end.

Citizens takes the position that the Board did not make an economic determination solely because the report issued by the Department of Energy and Natural Resources (DENR) was inadequate. As such, they contend that the burden of proof upon remand lies with DENR. Moreover, Citizens asserts that the "Court further held that any alleged shortcomings in the record on the issue of costs and benefits are not the responsibility of Citizens." (Citizens' brief, pg. 10.)

IEPA, on the other hand, maintains that the shortcomings in the record referred to by the Court were the failure of the Board to make a determination of the costs and benefits and the Board's failure to address the issue of the economic impact of the proposed regulatory change. Contrary to Citizens' position, the IEPA asserts that under no circumstances did the Court find that the burden of proof is upon DENR on remand; and further, the Agency asserts that the Board did not recognize that DENR had any burden in its Order of May 5, 1983, nor did it blame the alleged insufficiency of the Economic Impact Study as the sole reason for not having made the required findings.

In order to make a determination on these issues, we must look to the decision of the Court as well as the language contained in Section 27(b). The Court stated, in pertinent part:

> Although the technical reading of Section 27(b) may excuse the Board's failure to determine the economic consequences of its action, we believe the narrow technical reading of the statute would frustrate the legislature's intent to create some degree of economic accountability to "the people of the State of Illinois". The intent is to inject into the Board's decision-making equation a cost/benefit factor. Where, as here, the rejection of substitute regulations is in effect the adoption of a previously existing regulatory framework, the same economic accountability should be

> brought to bear. It follows, then that we agree with the appellant. The Board cannot avoid the statutorily required economic determination, even though as the Board opined, it is difficult to quantify certain "aesthetic impacts."
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> Where the administrative record is inadequate or incomplete, we must remand the proceeding for the making of a more complete record. [Citations Omitted.] While shortcomings in the record might in some cases be the responsibility of the appealing party, and thus provide no basis for alleging error such is not the case here. Here, the Illinois Pollution Control Board has the legal responsibility for making a determination of the cost and benefits, while the Department of Energy and Natural Resources has the legal responsibility for performing the study. The appellant, in order to receive a fair hearing, comporting with the statutory requirements, is entitled to have the Board confront the issue of the economic impact of the proposed regulatory change.
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> 134 Ill. App. 3d at 116. (Emphasis added.)

As it can be clearly seen, Citizens' position that the burden of proof is upon the DENR takes the Court's findings completely out of context. The Appellate Court merely notes that the shortcomings contained within the record were not the fault of the appellant because if they were, Citizens' legal position would have been irrelevant and therefore there would be no basis for any determination by the court upon the issue. In other words, the Court had to determine this issue to proceed logically. Yet in no way should this simple restatement of the law be construed to mean that DENR has the burden of proof to refute Citizens' assertions contained in the record.

Indeed, the Court also quoted from the Act. Section 27(b), in relevant part, states:

> [B]efore the adoption of any proposed regulations, or amendment to existing regulations, the Board shall conduct hearings on the economic impact of those new regulations, and shall receive comments from the public regarding the study of the economic impact of those proposals prepared by the Department (of Energy and Natural Resources)***. In adopting any such new regulation, the Board shall consider those elements detailed in the Department's study *** and other evidence in the public hearing record, as to whether the proposed regulation has any adverse economic impact on the people of the State of Illinois."
>
> (Ill. Rev. Stat. 1981, ch. 111-1/2 par. 1027(b). Emphasis added)

The "other evidence in the public hearing record" undoubtedly includes all of the testimony apart from the study DENR is legally required to perform. It stands to reason, then, that "the Board shall consider" the entire record vis-a-vis its ultimate economic determination. This includes, among other things, the information brought forth by the proponent, the DENR study, any testimony submitted by IEPA and its experts as well as public comment by any interested citizen or advocacy group. In short, that the DENR was required to perform a study in this proceeding is uncontested and indeed, completely clear. Yet to suggest that this legal requirement constitutes a burden of proof is a complete misapplication of the statute.

It is a well-settled principle that when an administrative agency such as the Board exercises its rulemaking powers, it is performing a quasi-legislative function, and therefore, it has no burden to support its conclusions with a given quantum of evidence. Illinois State Chamber of Commerce v. Pollution Control Board, 49 Ill. App. 3d 954 (1st Dist. 1977). This very same case held that the burden of establishing the invalidity of regulations promulgated by the Board is on the appellants, and that burden is very high. Id. at 960. It should be noted that the issue of whether or not to grant site-specific relief falls under the Board's rulemaking powers. In order to have a regulation overturned, the appellant must prove that it was clearly arbitrary, unreasonable or capricious because administrative agencies are inherently more qualified to determine technical problems. Central Illinois Light Co. v. Pollution Control Board, 159 Ill. App. 3d 389 (3rd Dist. 1987).

The Board now addresses the issue of whether Citizens' compliance with the "general-use" regulations are economically reasonable. IEPA alleges and Citizens admits that it could afford to implement the revisions needed to achieve compliance with the "general-use" regulations. As such, the Board limits itself to the issue of whether, given the existing conditions, the cost incurred by Citizens would be reasonable.

It should be noted at the outset, as it was in the original Board Order in May of 1983, that quantifying some of the aspects of this dispute is extremely difficult. The Appellate Court noted this when it said that "The Board cannot avoid the statutorily required economic determinators even though, as the Board opined, it is difficult to quantify certain 'aesthetic impacts'." Citizens, 134 Ill. App. 3d at 116. Upon remand, these difficulties remain. However, the Board is firmly convinced that the evidence, although imprecise, supports the Board's determination.

The Board notes that it had to refer to the existing record in that little evidence was forthcoming following the remand in regards to stream potential. In contravention of the established case law as well as Section 27(b), Citizens took the position that the only relevant new information would be an addition to

the DENR study. Because of this stance, Citizens objected to every witness brought forth by the IEPA in the hearings on remand. Consequently, instead of supplementing the record and educating the Board, Citizens took on an obstructionist role.

In conjunction with this difficulty, Citizens apparently interpreted the appellate court's statement that "the intent is to inject into the Board's decision-making equation a cost/benefit factor" to be solely monetary in nature. For example, Citizens objected to testimony which pertained to water quality as not relevant to economic impact. Based on the same grounds, Citizens also objected to testimony by Thomas R. Stack, who was familiar with both the Utility Company (Citizens) and the workings of the Illinois Commerce Commission as he was an employee of the latter.

This is truly significant because Citizens' argument throughout the course of the litigation has been that the Creek is so degraded that to spend money to comply with the "general-use" regulations would be imprudent and indeed, would benefit neither the company, its ratepayers nor the taxpayers of Illinois. Given this argument, along with the fact that the appellate court remanded the case to the Board to make a more complete record (i.e., economic impact analysis), it remains difficult for the Board to ascertain the logic behind Citizens' objections.

At the very same time, Citizens argues, both in its brief and at the remand hearings, that the decision of the appellate court to remand the case renders any prior decision of the Board null and void. Assuming, arguendo, this position is correct, then why would Citizens object to further testimony which indirectly - but undoubtedly - relates to the economic impact of the proposed regulation? Apparently, Citizens is of the opinion that the record on remand is incomplete, but the only thing which will make it whole is another DENR study. Such an interpretation could not possibly be based on any authority contained within Section 27(b) of the Act, but rather must stem from a misreading of the appellate court decision.

To say the very least, the Board finds this litigation strategy to be disconcerting. Citizens' position that stream potential is not related to the cost/benefit analysis reflects its misunderstanding of the "benefits" aspect. Any benefits which might be derived from the creek are necessarily related to its cleanliness. Concurrently, the "costs" are always the easiest to ascertain. The benefits, however, are far more subtle and therefore difficult to quantify.

Inasmuch as the Board is required to consider the economic study performed by DENR pursuant to Section 27(b) of the Act, it has done so. Yet the Board is not required to agree with the study, especially when, as in the instant case, seven public hearings were held and the record contains ample evidence which directly contradicts many of the study's conclusions.

For example, Citizens cites the DENR study and maintains that it reinforces their position that complying with the "general-use" guidelines would not be prudent and is therefore unreasonable. In fact, the study does come to these conclusions. Yet in some crucial areas, the rationale is so incomplete as to be totally lacking in credibility. Other areas are simply dismissed and not counted. The DENR study, in effect, ratified Citizens' position when it came to the conclusion that if everything IEPA alleged was true, then the economic benefit would still remain in Citizens favor by a ratio of 16:1 to 26:1. (See Board Order of May 5, 1983.) But the concept of "ratio" is a creation of the DENR study eagerly adopted by Citizens. Nowhere in the Act nor the appellate court language is ratio mentioned. In fact, absent fishing, the conclusory ratios exposed by Citizens totally fails to even consider any potential benefits. Indeed, it appears that Citizens' attitude was that if it is not quantifiable, it cannot be a benefit.

The theory behind this ratio analysis was that the only "cost" that could be quantified remained $52,000 a year in the loss of fishing. And this, according to the DENR study, was a worst-case scenario. In reality, the author stated, the losses incurred may very well be zero and therefore the cost/benefit ratio would be infinite. In arriving to this conclusion, the author considered four separate topics; streamside activities, aesthetics, natural resources and fishing. Of these, only fishing - after it had been lumped together with natural resources - could be quantified.

The study also lumped together aesthetics and streamside activities:

> "Q (David Rieser, IEPA Attorney.) Chapter 5, to continue, you discussed the variety of available uses. Why did you combine aesthetics and streamside activities in your discussion?
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> A (Dr. Ducharme, author of EcIS) Because it seemed to me that they were closely related, that streamside activity -- and this is a personal judgment drawing from my own personal, the way I react to a creek or stream of water body -- is that the degree to which I want to picnic near that stream or camp near it is really in large part to what the water body looks like. And it seems to me reasonable that most people would view it that way, and that's the reason for combining them.
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> Q And Northwestern Illinois Planning Commission ("NIPC) defines them as entirely different things, isn't that correct? They are uses which are identified as different things?
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> A Yes.

Q So there are differences between them?

A Yes, I suppose there are from strictly speaking.

Q Are those differences --

A I would characterize streamside activity and [sic] a picnic table next to the creek. I would characterize the aesthetic aspect the way the creek looks or the way it smells.

Q Would there be differences?

A And I think there is a connection between the two.

Q Despite the connection would there be different quantifiable values associated with those two different uses?

A Well, I would find it difficult to identify and quantify the factors that were related to streamside activities other than the aesthetic. In this particular case if boating and water skiing were possibilities, they would be related, but they are not potential uses in Lily Cache Creek. And so it seems to me it boils to a question of pretty much of aesthetics in terms of that waterbody.

Q Would there be any incoherent values associated with having an aesthetically pleasing stream that would be different from those which could be associated with streamside activities?

A I suppose there could be.

Q And is there a way to quantify these?

A Well, if you could -- I am thinking again of water contact activity, where you might put a value on swimming opportunity or boating opportunity of water skiing opportunity, would be tough.

Q Similarly why have you combined natural resource protection use and the fishing, for the same reasons that you stated before?

A Say that again.

Q You combined those natural resources protection and use and --

A Yes, because the natural resource protection relates to the stream's capability to propagate,

serve as a breeding ground and spawning ground for fish. That is part of the natural resources value of the creek.

It was intimately related to the aquatic life in the testimony and I thought it seems logical to me to connect the two.

Q Again in the NIPC stream report, is it possible to quantify values that are different for each category?

A I don't know. On that I am not enough of an aquatic biologist to know how you would separate out the food fish chain from the fish chain, you know, the connection between the two and sorting out all of the factors that are related to each one of them. I don't know, I can't answer your question.

Q So there would be some -- so you are not aware of -- so you are not able to quantify the value of the stream as a fish spawning stream as opposed to a fishing stream, is that correct?

A Yes.(Tr. at 896-899.)

The DENR study also stated that there existed the possibility of odors, but that it was not significant. Although evidence was adduced through the hearing - as well as in the DENR study - that Bolingbrook and Will County would be seeking to increase public access to Lily Cache Creek, no value was placed there either. Finally, the DENR study asserted that if the water standards for Citizens' #1 plant were to be relaxed, economic benefit would be conferred upon those other four plants along the creek currently in compliance with the "general use" requirements in that their standards might also be relaxed.

Throughout the record, it becomes abundantly clear that the value of a clean stream remains an intangible quality, but produces tangible, if not quantifiable, economic results. What if, as the record revealed, Bolingbrook and/or Will County choose to develop the land and public access is increased? What would the price of the land be if a clear stream ran through the affected properties with fishing opportunities and water activities for children? Even assuming private ownership, land values - and subsequently the tax base - would only increase. Conversely, if effluent standards were relaxed and odors appeared, it stands to reason that land values would decrease. Yet this was never considered by the DENR study, and any attempt to gain a better understanding of these aesthetic benefits was objected to by Citizens on remand.

DENR chose to maintain that relaxing effluent standards for Citizens would provide economic benefits to other utilities operating along the creek. The approach belies a misconception of site-specific relief in particular and, in general, directly contravenes the purpose of the Act. The notion that "if one can pollute, all can pollute" hardly represents a long-term economic benefit, assuming, that is, that the other utilities currently complying would even qualify for site-specific relief. In short, the Board vehemently disagrees with this rationale.

Citizens lastly argues that to meet the "general-use" standards would impose a burden upon their customers so substantial that it renders compliance to be economically unreasonable. In asserting this point, Citizens maintains that only those served by WSB #1 would bear the cost of updating the plant. (See Board order, May 5, 1983.) Citizens has two plants in the Bolingbrook area and many more throughout the Chicago Metropolitan Area. It is Citizens' contention that each region pays its own way for those charges which are identifiable and unique to that region.

The Board finds this proposition to be, at best, tenuous. At its worst, it constitutes a self-created hardship, the only purpose of which is to bolster Citizens' argument in regards to economic hardship. In its effort to persuade the Board, Citizens states that WSB#2 was funded by developers who in turn passed on the costs to homeowners. Implicit in this rationale, however, remains the fact that costs are diffused through a market economy. That is, the developers ultimately passed on those costs to speculators, brokers, homeowners, renters, etc. In this vein, it is not unreasonable to assume that Citizens would employ the same technique and disperse the cost of compliance so that any increase would be incremental. Perhaps equally significant, Citizens' analogy proves false in that anyone who incurred any expense chose to do so within the rules of the free market. In no way is the situation analogous to the restrictions and equities imposed by the Illinois Commerce Commission. Moreover, Thomas R. Stack, an employee of the Illinois Commerce Commission, testified and basically refuted all of Citizens claims. He also testified that ratepayers of Citizens WSB #1 and WSB #2 plants paid identical rates at the time in issue. (See Board Order May 5, 1983.) Apparently, Citizens would have the Board believe that 1) this was a coincidence; 2) that large expenses incurred by publicly-regulated utilities are regionalized and therefore not spread out across the board, and 3) that the Commerce Commission would affirm a plan whereby one faction of ratepayers would be subjected to significant increases while the vast majority of others remain unaffected.

The Board not only disagrees with this contention, but notes it is reflective of Citizens' position throughout the course of the proceeding. Citizens offered no alternative solutions and every issue prsented was done so narrowly - only within the context of its objective. As pointed out earlier, Citizens

maintained that upon remand, the prior order of the Board was a nullity and that the record was incomplete. Yet upon remand, Citizens had no witnesses to offer, and objected to virtually everything.

While other similarly situated plants thoughout the state are in compliance with water quality regulations, Citizens continues to assert that they are somehow special. Inherent in their argument is the allegation that the regulations being imposed upon them are arbitrary and therefore unreasonable. This argument demonstrates a complete disregard for the purpose of the regulations as well as the history thereof. Total suspended solids, ammonia nitrogen and biochemical oxygen demand directly affect the entire ecosystem of a waterway. Damage to micro-organisms feed their way up through the food chain and affect the entire aquatic community. The regulations were adopted so as to prevent this type of damage. And these regulations were formulated by scientific data; that is, the numbers were adopted in light of evidence which demonstrated that past a certain point, effluents being released into a waterway detrimentally affect the aquatic organisms dependent upon that waterway.

With this in mind, the Board has considered the testimony upon remand and scrutinized the prior existing record. Although the evidence was contradictory, the Board has determined that Lily Cache Creek is typical of most streams in the Northern Illinois region. Based upon the testimony of Dr. Ronald Flemal,[1] whose field of expertise is hydrology and soil content, the Board concludes that Lily Cache Creek has the potential to support a diverse aquatic biota. Wallace Matsunaga also testified, and based on his expertise in biology, he concluded that Lily Cache Creek supported a diverse aquatic community. As such, the Board finds Citizens' characterization of the creek as hopelessly degraded to be unfounded.

Thus the "general-use" standards the Board seeks to enforce in this proceeding are not arbitrary, but rather, consist of firmly established scientific criteria necessary to preserve the health of the environment. The Board is here by virtue of statute to do just that. Citizens has failed to rebut the scientific data which demonstrates that its effluent release damages the aquatic diversity of the stream. Moreover, they have failed to assert any unusual or <u>special</u> economic burden not suffered by other utilities who are currently in compliance. The Board finds instructive the comments of a decision years ago in an opinion drafted by Professor of Law David Currie when he was Chairman of the Board. To wit:

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[1]Subsequent to his testimony in this proceeding, Dr. Flemal has been appointed to the Board. Accordingly, he took no part in this decision.

> "...it would be folly to set effluent standards at such a level as to permit existing pollution sources in every case to degrade the water to the level set by the standard. To do so would transform standards designed to protect the environment into licenses to degrade. It would ignore the fact that a water quality standard prescribes not the ideal condition of the environment, but an outer limit of dirtiness that should be avoided if it reasonably can be. It would commit us to the philosophy of allowing the environment to be as dirty as we can bear it, when our correct philosophy should be to make the environment as clean as we reasonably can.
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> (R70-5, March 12, 1971. See also, PCB 88-47, p. 8 and R87-35 pp. 16-18).

Finally, the Board notes that a wealth of precedent exists to support our decision today. In Central Illinois Light Co. v. Pollution Control Board, 159 Ill. App. 3d 389 (3rd Dist. 1987), the Appellate Court held that the Board's decision to deny CILCO site-specific relief was supported by the evidence. Similar to the instant case, CILCO asserted that to comply with effluent standards in regards to ash would be unduly expensive. The court found:

> CILCO's witness testified that the physicochemical treatment method was unreasonably expensive at a cost of $550,000 a year total-levelized cost for 25 years. CILCO also provided testimony that indicated a new ash pond would cost approximately $11 million. Finally, CILCO maintained that a third alternative, that of ash disposal off-site, would be too expensive at $10 to $14 per ton. However, as respondents further point out, for each of the alleged unreasonable alternative, CILCO submitted no evidence to establish a comparative basis upon which the Board could determine the reasonableness of the cost of any of these alternatives.

159 Ill.App. 3d at 391 (Emphasis added.)

The main difference between CILCO and the proceeding at bar is that at the time Citizens applied for site-specific relief, four other plants operating in the area were in compliance with the regulations Citizens sought to avoid.

In Greater Peoria Sanitary and Sewage Disposal Dist., 185 Ill. App. 3d 9 (3rd Dist.1989), the Appellate Court again ruled in favor of the Board when it denied site-specific relief to the District in regards to ammonia-nitrogen effluent standards. Here the Court found that, like the Citizens case, current violations of water quality downstream were contributed to by the District's

ammonia discharges. Accord, Illinois State Chamber of Commerce v. Pollution Control Board, 177 Ill. App. 3d 923 (2nd Dist. 1988).

In a case virtually analogous to the one at bar, the Appellate Court upheld the Board's denial of site-specific relief. In City of Mendota v. Pollution Control Board, 192 Ill. App. 3d 704 (3rd Dist. 1990), the Court found that the City, which operated the sewage treatment plant and sanitary sewer water system, failed to establish that spending $14 million for a new sewer system in a town of seven thousand people was economically unreasonable. The court refused to overturn the Board and grant site-specific relief despite the fact that evidence existed which demonstrated that pollution of the waterway in question occurred from sources in addition to the city.

The City of Mendota shatters the nucleus of Citizen's petition, namely, that the condition of the stream is so degraded from external sources that compliance would be meaningless and therefore unreasonable. In rejoinder to the identical argument made by the city of Mendota, the Court held:

> This court does not find the Board's decision on this issue to be arbitrary and capricious. The legislature passed the Act to "restore, protect, and enhance the quality of the environment." (Ill.Rev.State.1987, ch. 111-1/2, par. 1002(b).) There is no hidden legislative purpose to be gleaned from the statute. The purpose of the Act is to keep the waters of this state clean. We appreciate the great expense the city might incur if they replace their entire sewer system, and we applaud the city's recent efforts in detecting the whereabouts of infiltration and inflow sources. This court is not persuaded, however, that this case warrants a site-specific exemption to the sewer over-flow standard set forth in section 306.304 of the Board's water pollution regulations. 35 Ill. Adm. Code Section 306.304 (1985).

192 Ill. App. 3d at 707.

There are two distinctions which apply between Mendota and Citizens, but both favor Mendota. First, Mendota made a good-faith effort to comply with the regulations; and second, the lack of conformance in Mendota was intermittent and would only occur when precipitation was extreme. Citizens, on the other hand, remains in perpetual non-compliance and they have yet to seek alternative solutions - maintaining instead that the cost will be unduly burdensome and only WSB #1 ratepayers will be liable. (See Board Order May 5, 1983.)

Conclusion

The Board has examined the elements detailed in the Department's study and the other evidence in the public record and remains convinced that Citizens' petition should not be granted for a variety of reasons. The cost to Citizens to upgrade its plant is not unreasonable and it has not distinguished itself sufficiently - or indeed, at all - from plants in the area and throughout the state that are currently in compliance. Citizens' assertion that only the WSB #1 ratepayers will bear the cost of compliance is viewed with a great deal of skepticism. There is very little common sense inherent in this position and the Board cannot help perceive it as self-serving. In addition, allowing Citizens to degrade the creek will certainly have an adverse economic impact on the people of Illinois in that Lilly Cache Creek itself has the ability within its existing structure to support a diverse aquatic biota. In fact, the creek is a feeder stream into the DuPage River and will ultimately affect the aquatic health - or lack thereof - of that waterway. For these reasons in conjunction with the State Act ("to restore, protect and enhance") and the Federal Clean Water Act ("that wherever attainable, and interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983"), the Board finds that the record does not support Citizens' request for site-specific relief. In particular, we have determined that, on balance, compliance with the general-use standards is economically reasonable for Citizens Utilities and that, under the terms of Section 27 of the Act, the proposed regulation has an adverse impact on the people of the State of Illinois.

BOARD ORDER

Accordingly, for the reasons expressed herein, Citizens Utilities petition for site-specific relief is hereby denied.

IT IS SO ORDERED.

Board Member R. Flemal abstained.

Board Member B. Forcade concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board do hereby certify that the above Opinion and Order was adopted on the 3rd day of July, 1990 by a vote of 6-0.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board