

ILLINOIS POLLUTION CONTROL BOARD
November 6, 1986

ILLINOIS POWER COMPANY)
(Vermilion Power Plant),)
)
Petitioner,)
)
v.) PCB 86-12
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

MS. MARILI MCFAWN, SCHIFF HARDIN & WAITE, APPEARED ON BEHALF OF ILLINOIS POWER COMPANY.

MS. KATHLEEN BASSI, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

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

This matter comes before the Board upon a January 21, 1986, petition for review of reissued NPDES Permit No. IL0004057 filed on behalf of the Illinois Power Company ("IPC"). Hearing was held on August 27, 1986, in Danville, Illinois, at which the parties and one member of the public were in attendance. IPC filed its posthearing brief on October 17, 1986; the Illinois Environmental Protection Agency ("Agency") and IPC filed response briefs on October 24 and October 31, respectively.

In its petition IPC contested fifteen conditions of the permit, as reissued on December 23, 1985, on a combination of procedural and "factual" grounds. On the basis of these arguments, IPC requested that the permit be remanded to the Agency.

At hearing (R. at 14) and in its subsequent response brief the Agency admitted to the procedural errors, at least in part, based upon a Board holding in Illinois Power Company (Hennepin Power Plant) v. Illinois Environmental Protection Agency, PCB 85-119, March 20, 1986, and July 11, 1986. The Agency further asserts that this matter must be remanded to it before the admitted procedural errors can be rectified. On this basis, the Agency also requests that the permit be remanded.

Inasmuch as the two parties have no disagreement over the essential action required in this matter, the Board will herein remand the permit to the Agency for reconsideration consistent with the mandated procedures for Agency review of NPDES permits.

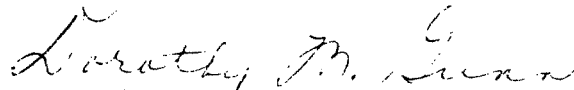
IPC also requests that the Board address some of the contested "factual" matters at this time. Among others, IPC requests that the Board rule on the question of whether certain of the Vermilion plant's wastestreams might be correctly characterized as "internal wastestreams". The Board declines to do so at this time. Consistent with its holding in Hennepin, the Board believes that rectification of the procedural errors is a necessary prelude in this instance to consideration of any of the other matters of possible dispute.

ORDER

The Illinois Environmental Protection Agency's December 23, 1985, reissuance of NPDES permit No. IL0004057 is hereby vacated and this matter is remanded to the Agency for further action consistent with this Opinion and Order.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 6th day of November, 1985, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board