

ILLINOIS POLLUTION CONTROL BOARD
July 3, 1990

WESTERN ILLINOIS POWER)
COOPERATIVE, INC.,)
)
Petitioner,) PCB 85-164
) (Permit Appeal)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)
)

DISSENTING OPINION (by J.D. Dumelle, J. Theodore Meyer, and M.L. Nardulli):

Our reasons for dissenting are two-fold: First, this case has languished since being filed with the Board on October 24, 1985. A permit appeal is based upon the record before the Agency at the time of the permit application. Why then have almost 5 years gone by without resolution of this matter?

Second, the IEPA, in two separate filings in R90-8 (June 25, 1990 and June 27, 1990) has stated:

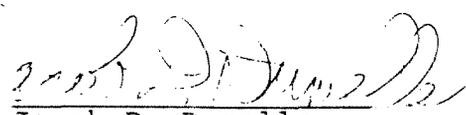
Potential Abuses

The Agency has pointed out certain actual and potential abuses available to the permit applicant because of its ability to submit new evidence outside the scope of the record without restraint. Applicants are able to prolong discovery and develop new information not available to the Agency. Over the last five years, the average length of time from filing to Board Order in NPDES permit appeals was 1 year 9 months. However, appeals such as Citizens Utilities Co. of Illinois v. Illinois EPA, 85-166 and 85-140 and Western Illinois Power Cooperative, Inc. v. Illinois EPA, PCB 85-164 have taken upwards of 3 and 4 years. This often allows the applicant to delay compliance with the Act and corresponding regulations. Also, the Agency feels that the applicant has an opportunity to forum-shop.

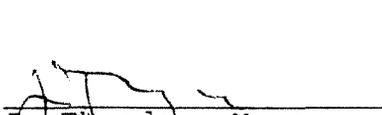
Thus on one hand the IEPA in its June 29, 1990 status report in the instant case has agreed to more time but on the other

hand, in R90-8, the IEPA is holding up this same case as a terrible example of slow governmental action. Who speaks for IEPA? And shouldn't it have one voice?

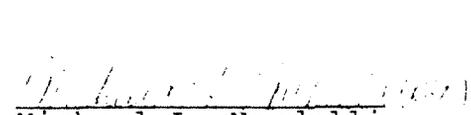
We think that almost 5 years of delay are enough. We would have dismissed this case for want of prosecution.



Jacob D. Dumelle
Board Member

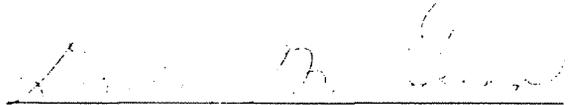


J. Theodore Meyer
Board Member



Michael L. Nardulli
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above dissenting opinion was submitted the 11th day of July, 1990.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board