

ILLINOIS POLLUTION CONTROL BOARD  
June 13, 1985

IN THE MATTER OF: )  
 )  
Proposed Amendments to Title 35 ) R84-29  
Subtitle D Mine Related Water )  
Pollution, Chapter I, Section )  
406.106. )

ORDER OF THE BOARD (by R. Flemal):

This matter comes before the Board upon a motion for emergency rulemaking filed by the Illinois Coal Association ("ICA) on May 28, 1985. At that time ICA requested the Board to adopt the proposed text of R84-29 as an emergency rule, pending the final determination on R84-29. ICA alleges that this action is necessary to avert a threat to the public interest, within the meaning of Ill. Rev. Stat. Ch. 111 1/2, par. 1027(c).

The R84-29 proposal was filed by ICA on May 29, 1984, and subsequently amended on February 5, 1985, to amend 35 Ill. Adm. Code 406.106 relating to various limitations on mine discharge effluents, including those for total suspended solids. The current limitations on TSS in mine discharges were adopted in 1980, and were in conformance with federal regulations in effect at that time. USEPA adopted new regulations in this area in 1982, and proposed rules on May 4, 1984, which have not yet been adopted. The ICA proposal is largely based on the 1982 regulations and the unadopted 1984 rules. Merit hearings were held on the ICA proposal on November 30, 1984, and December 21, 1984, and the proposal is currently awaiting the preparation of an economic impact study (EcIS).

Section 27(c) provides for emergency rulemaking under Section 5.02 of the Illinois Administrative Procedure Act where the Board believes that a situation exists which constitutes a "threat to the public interest, safety or welfare". ICA alleges the existence of a threat to the public interest because of the aforementioned differences between applicable state and federal regulations which ICA claims causes Illinois mine operators to choose between risking enforcement actions against them under 406.106, or constructing large sediment basins to comply with 406.106. ICA contends that if such basins are constructed, the resulting cost will have to be passed on to purchasers, thereby making the price of Illinois coal uncompetitive with that produced in other states. The final result, ICA believes, will be a loss of mine worker jobs in Illinois.

The Board denies ICA's request for emergency rulemaking, for several reasons. First, even assuming that the competitive disadvantage alleged by ICA is a "threat to the public interest"

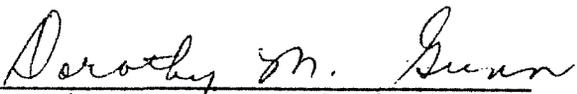
within the meaning of Section 27(c), adoption of an emergency rule would not provide ICA with the relief it desires because 5.02 requires that an emergency rule can be effective for only up to 150 days. Moreover, Section 5.02 states that no emergency rule may be adopted more than once in any 24 month period. It is unlikely that the rulemaking requirements of the Environmental Protection Act and the Administrative Procedure Act could be completed in 150 days. So even if the Board were to grant this motion members of the ICA would, at the end of the 150 day period, find themselves facing the same considerations as they do today.

Second, the potential disadvantage claimed by ICA as a consequence of the statutory conflict is simply not a "threat to the public interest" as envisioned by Section 27(c). The type of relief requested by ICA is justified only in extraordinary circumstances, and ICA failed to make such a showing. The argument that the situation faced by ICA's members is of an "emergency" nature lacks credibility for several reasons. To begin with, the differences between state and federal regulations existed for one and a half years before ICA initiated R84-29 and two and a half years before the Motion for Emergency Rulemaking was made. Also, ICA was aware of the possibility of, and the amount of time involved in, an EcIS when it filed R84-29.

The Board reminds ICA that this order does not foreclose mine operators from filing for variances should they find it necessary to do so.

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 13<sup>th</sup> day of June, 1985 by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board