

ILLINOIS POLLUTION CONTROL BOARD
April 24, 1986

IN THE MATTER OF:)

PROPOSED AMENDMENTS TO TITLE 35,)
SUBTITLE D: MINE RELATED WATER)
POLLUTION, CHAPTER I, SECTION)
406.106)

R84-29

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

This matter comes before the Board upon an April 4, 1986, motion (hereinafter "Agency motion") filed by the Illinois Environmental Protection Agency ("Agency") to request that the Department of Energy and Natural Resources (DENR) revise the economic impact analysis prepared in this proceeding. That analysis is entitled "Economic Impact Analysis of R84-29: Mine-Related Water Pollution Regulations". DENR filed a response on April 9, 1986, requesting that the Board deny the Agency's motion. The Illinois Coal Association (ICA) filed a memorandum in opposition to the Agency's motion on April 10, 1986. For the reasons discussed below, the Board will deny the Agency's motion.

The ICA initiated this proceeding on May 31, 1984, when it petitioned the Board to amend 35 Ill. Adm. Code 406.106 by deleting the former provision relating to discharges during rainfall events. The ICA's substitute proposal exempts discharges from the requirements of 406.106(b) (except pH), but imposes a .5 ml/l settleable solids (SS) limitation on any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 10-year 24-hour precipitation event (or snowmelt of equivalent volume). The .5 ml/l SS standard is the current federal standard. The impetus for the ICA proposal is that it would allow mine operators in Illinois to utilize smaller sediment ponds.

On March 15, 1985, the Agency submitted an alternative proposal which would eliminate the total suspended solids monitoring requirement for mine discharges and instead provide two design criteria alternatives for treatment of alkaline surface drainage. The alternatives are: the design and construction of 24-hour detention ponds for runoff from the 10-year 24-hour storm event (known as Alternative "A"); or the design and construction of sediment ponds capable of removing 80% of sediment from the 10-year 24-hour storm event (known as Alternative "B").

The economic impact analysis or study (EcIS) prepared for this proceeding pursuant to Ill. Rev. Stat. Ch. 96^{1/2} par. 7404 was done by the firm of Huff & Huff, Inc. The EcIS considered and discussed the economic impact of both the ICA proposal and Alternative "A" of the Agency's proposal, but not the economic impact of Alternative "B" of the latter proposal. The Agency alleges that this omission caused the EcIS to understate the economic benefit of the Agency proposal (Agency motion, p. 3), and consequently caused the EcIS to inaccurately compare the savings that would result from either proposal.

The Agency also argues that the EcIS is defective due to what it claims are "analyses and conclusions" in the document which could lead the Board to make inaccurate findings of fact on the proposed regulations (Agency motion, par. 14). The "analyses and conclusions" in the EcIS which the Agency believes are erroneous are noted in paragraphs 15-18 of the Agency motion, and include the use of a 20-year life for an underground mine, rather than 30 years; the conclusion that no particular adverse effects have been identified in other states adopting the .5 ml/l rule change, which is inconsistent with the data found in Table 3-5 of the EcIS; the use for comparison purposes of an acre-feet per acre disturbed unit of measurement, which the Agency contends is an inadequate criterion because it does not account for all drainage to a sedimentation pond when part of a basin remains undisturbed; and the EcIS' failure to include the costs of sample collection, data handling, and compliance report preparation in the determination of costs saved under the Agency proposal due to the elimination of some sampling requirements (the Agency alleges that omission of these costs results in an inaccurate analysis of the savings derived from its proposal).

The Agency contends that the aforementioned alleged shortcomings of the EcIS prevent the Board from determining, as required by 27 of the Illinois Environmental Protection Act ("Act"), whether the proposed regulations have any adverse economic impact on the people of the State of Illinois.

A recent Appellate Court case, Citizens Utilities Company of Illinois v. Illinois Pollution Control Board, 479 N.E. 2d 1213 (1985) clarified the Board's responsibilities pursuant to 27 of the Act. In that case the Third District held that 27 requires the Board to determine the economic impact of any proposed regulation, and that such determination must be based on the EcIS and other evidence in the record.

The Board first finds that the concerns noted by the Agency regarding some "analyses and conclusions" of the EcIS (Agency motion, par. 15-18) are not sufficiently substantive to support a determination that the Board is unable to make its economic determination as a consequence of them. Moreover, through its motion the Agency has alerted the Board to these "analyses and

conclusions", thereby greatly reducing the possibility that these alleged faults would lead the Board to make inaccurate findings of fact.

The EcIS' failure to address Alternative "B" of the Agency proposal, on the other hand, might have substantially hindered the Board's ability to adequately consider the comparative economic aspects of the ICA and Agency proposals. However, the potential shortcoming of the EcIS in this regard was remedied at hearing by extensive questioning on what the economic ramifications of Alternative "B" would be. Section 27(b) of the Act states in part that:

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 (emphasis added).

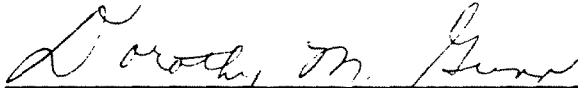
Therefore, it appears that the Board will be able, on the record as a whole, to make a determination of the economic aspects of the Agency proposal.

The Board is constrained from granting the relief requested by the Agency for another reason as well. The Board is unaware of any statutory authority empowering it to order DENR to revise or supplement an EcIS (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, _____ PCB _____, April 10, 1986). However, for the reasons stated above such a lack of authority is not troublesome in this instance.

The Agency motion is therefore denied.

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 24th day of April, 1986, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board