

ILLINOIS POLLUTION CONTROL BOARD
May 22, 1986

IN THE MATTER OF:

PETITION FOR SITE SPECIFIC
RELIEF BY THE CITY OF ALTON

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ORDER OF THE BOARD (by J. Marlin):

On May 16, 1985, the Board adopted a first notice order proposing site-specific language for the City of Alton ("City"). First notice was published at 9 Ill. Reg. 8392 on June 7, 1985. The Board modified this language in its second notice Order dated March 27, 1986. The second notice period began on March 28, 1986 and ended on April 17, 1986 when the Joint Committee on Administrative Rules (JCAR) issued a certification of no objection to the rulemaking. The JCAR certification is conditioned upon the Board adding the clause "[n]o later than the date of completion of Lock and Dam No. 26" to proposed Section 304.210(b)(3). For reasons explained below, the Board will await further comments from the City, the Illinois Environmental Protection Agency ("Agency"), and the United States Environmental Protection Agency (USEPA) before proceeding with this rulemaking.

Subsequent to the Board's second notice Order, the Agency filed letters with the Board dated April 9 and 17, 1986 stating that this matter was still in the negotiation process with the City and USEPA. Appended to the April 17 letter was a USEPA preliminary comment dated April 16, 1986, suggesting that if additional economic data were placed in the record, an exception to the requirement that all river flows up to the 25 year flood event be transported to the wastewater treatment plant may be possible. It appears that the City is now moving to authorize an additional engineering cost and feasibility study.

Once the second notice period commences by JCAR's receipt of a filing, Section 5.01(b) of the Illinois Administrative Procedure Act, (APA), Ill. Rev. Stat. 1985, ch. 127, par. 1005.01(b), provides that the Board may not subsequently change the language of a proposed rule unless it is in response to comments from JCAR. Additionally, JCAR has interpreted Section 5.01(c) as requiring that the rule as approved at second notice must then be filed. Thus, in the ordinary course of events, the Board could not accommodate any untimely, post-first notice public comments that attempt to substantially change the proposed rule during the second notice period except by way of a proceeding to amend an adopted rule. The Agency is requested to bear this in mind in future proceedings.

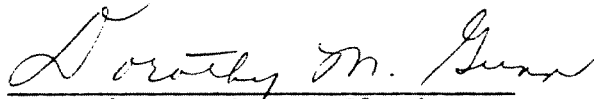
Section 5.01(d) of the APA provides, however, that if the Board does not adopt and file a final rule within one year of commencement of the 1st notice period--here, June 7, 1986--all of the APA notice procedures must be recommenced and the proposal republished in the Illinois Register.

Under the circumstances here, the Board believes the most efficient course of action is to await the outcome of the negotiation process between the participants and the USEPA and return to first notice if and when warranted. This will add a minimum of 90 days to the proceeding. By spending additional time in negotiation, future time consuming appeals may be avoided.

In the interim, the City shall submit monthly letters to the Board informing it of the status of negotiations. The first letter pursuant to this Order is due on July 1, 1986.

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 22nd day of May, 1986, by a vote of 7-0.



Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board