

ILLINOIS POLLUTION CONTROL BOARD  
July 14, 1983

IN THE MATTER OF: )  
)  
PROPOSED SITE SPECIFIC WATER )  
POLLUTION RULES AND REGULATIONS ) R81-19  
APPLICABLE TO CITIZENS UTILITIES )  
COMPANY OF ILLINOIS' DISCHARGE )  
TO LILY CACHE CREEK )

ORDER OF THE BOARD (by J.D. Dumelle):

The following have been filed in this matter since the Board's May 5, 1983 Final Order of dismissal:

1. Citizens Utilities' June 9, 1983 motion for rehearing;
2. Citizens Utilities' June 9, 1983 motion for oral argument;
3. Illinois Environmental Protection Agency's (Agency's) June 27, 1983 response to motion for rehearing;
4. Citizens Utilities' July 11, 1983 motion for leave to file instanter and supplement to motion for rehearing;
5. Agency's July 11, 1983 motion to strike or in the alternative to allow Agency response; and
6. Citizen's Utilities' July 11, 1983 motion to strike Agency's motion and alternative motion for leave to file answer.
7. Village of Bollingbrook's July 14, 1983 motion for rehearing and other relief.

Several of the motions deal with the rights of parties to additional argument beyond the original motion and response which are specifically allowed by 35 Ill. Adm. Code 103.140(c). The Board notes that under that subsection as well as subsection (d), replies and oral argument are not allowed absent Board permission or direction. The rules contemplate that such permission or direction be gained by way of an appropriate motion specifying the need for such additional filings or argument. However, the failure to file such a motion is not necessarily fatal to Board acceptance.

In this case the Board accepts all filings, denies the request for oral argument in that no compelling reason therefore has been presented and denies all motions to strike. The Board notes, however, that the existence of an ongoing study by the United States Geological Survey in conjunction with the Agency as pointed out Citizens

Utilities' July 11 supplement, as well as the Agency's July 11 response including an Illinois Commerce Commission Order regarding Citizens Utilities have little or no relevance to this proceeding. That there is an ongoing study does not serve to establish that there is sufficient evidence to support the proposal. Rather, it serves to establish that at some future time there may be. As such, it may be relevant in the context of a variance proceeding, but it is not relevant here.

The Board hereby grants reconsideration and affirms its May 5, 1983 Order of dismissal. None of the filings present any relevant information which was not considered in that Order. While it is true that state and federal actions may result in revision of water quality standards for most of the major river basins in the state within the next five years, that alone does not justify placing all compliance plans on hold during that period.

The Board also notes that Citizens Utilities, while stating that the Agency acted improperly as a "recalcitrant adversary" (June 9, 1983 Motion for Rehearing, p. 14), appears to believe that the Board's decision in regulatory matters should be based upon which participant presented the strongest case. That is not, and never has been, the basis for Board rulemaking. The Environmental Protection Act and the Board rules allow the Agency to participate in any regulatory proceeding and take any posture the Agency chooses. The Board bases its decision upon whether the record as a whole contains sufficient information to justify adoption of the regulation. In this case the Board determined that it did not, and nothing presented in these filings demonstrates that decision to have been wrong.

IT IS SO ORDERED.  
Board Member D. Anderson dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Order was adopted on the 14<sup>th</sup> day of July, 1983 by a vote of 3-1.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board