

ILLINOIS POLLUTION CONTROL BOARD
October 24, 1985

PEOPLE OF THE STATE OF ILLINOIS,)
)
 v.) PCB 83-219
)
 COMMONWEALTH EDISON COMPANY,)
 (Certification No. 21RA-ILL-)
 WPC-82-17)

OPINION AND ORDER OF THE BOARD (by J. Anderson):

This matter comes before the Board on remand from the Circuit Court of Cook County (No. 83-L-53339) of the tax decertification of the Byron Waste Water Treatment Plant owned by Commonwealth Edison Company ("Edison"). By way of post-hearing brief filed on August 9, 1985 in this matter, Edison states that the Byron Plant should be decertified (assuming that the Board does not conclude that the Revenue Act is unconstitutional). (Edison Brief at 4). The Attorney General, in a brief filed August 22, 1985, also agrees that this facility should be decertified. (A.G. Brief at 7).

The Board wishes to reiterate its position as stated in its order of December 28, 1983 in this matter:

"The Board does not find this to be an appropriate case for adjudication by the Board of the constitutionality of this legislative enactment. The arguments accepted by the Board in Santa Fe supporting its resolution of a constitutional challenge to an enactment altering the enforcement mechanism of the Environmental Protection Act are inapplicable here. They do not persuade the Board that it should enter the arena of taxation law to consider the constitutionality of a tax benefit provision of the Revenue Act."

However, the Board does find that the Byron waste-water treatment plant falls within subparagraph 502a-2(a)(ii) of the Illinois Revenue Act of 1939, as amended, as "treating wastewater produced by the nuclear generation of electric power." Inasmuch as Edison has agreed to the decertification of the Byron Plant, the Board will revoke Tax Certification No. 21RA-ILL-WPC-82-17 issued for this facility.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

Tax Certification No. 21RA-ILL-WPC-82-17 is hereby revoked.

IT IS SO ORDERED.

B. S. Forcade and J. T. Meyer concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 24th day of October, 1985, by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board