

ILLINOIS POLLUTION CONTROL BOARD
October 18, 1979

IN THE MATTER OF:)
) R77-17
WATER POLLUTION CONTROL REGULATION)
AMENDMENTS: COOLING LAKES)

OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

On December 8, 1977 the Board, on its own motion, proposed an amendment to Rule 104 of Chapter 3: Water Pollution and authorized hearings on the proposed amendments and publication thereof. Hearings were held in this matter on September 12, 1978 in Springfield and on September 14, 1978 in Chicago.

The Board proposal hearing was precipitated by a Third District Appellate Court decision entered November 4, 1977 in Environmental Protection Agency v. Central Illinois Light Co., 54 Ill.3rd 155, which reversed the Board's finding in a similarly entitled case, PCB 75-387, 23 PCB 107. The court found that even where a natural stream has been dammed to form an impoundment, the withdrawal of more than one-half of the impounded waters from some other source will relieve the impoundment of regulation as an artificial cooling lake. The Board felt that such an interpretation was unfortunate, to the extent that it might allow the conversion of protected waters of the State to treatment works without benefit of any environmental protection. On that basis, to assure the environmental quality of existing protected waters of the State when physically altered for cooling purposes by impoundment, damming, etc., the Board proposed to change the definition of an artificial cooling lake in Rule 104 of Chapter 3: Water Pollution to be amended as follows:

Rule 104: "Artificial Cooling Lake" means any manmade lake, reservoir or other impoundment, constructed by damming the flow of a stream, which is used to cool the water discharged from the condensers of a steam-electric generating plant for recirculation in substantial part to the condensers, and includes any such manmade lake, reservoir or other impoundment where flow from the dammed stream and any natural runoff into such manmade lake, reservoir or impoundment from any surrounding, adjacent or upstream watershed constitutes or contributes five percent (5%) or more of the water entering, im-

pounded in, used for cooling purposes in connection with, or discharged by any means from such manmade lake, reservoir or other impoundment.

At the hearings it became apparent that this definition of artificial cooling lake was causing confusion. Testimony and questions by the Illinois Environmental Protection Agency, Illinois Power Company, Central Illinois Public Service Company, and Commonwealth Edison Company indicated concern with respect to the new language. Of special concern was the 5% figure which limited the total amount of a so-called natural water that could be utilized by an artificial cooling lake. As the testimony and questioning continued, it became obvious that numerically limiting the existing phrase "substantial part" was not going to be possible. Since the existing language is very general, the Board can find no reason to exacerbate the issue with additional numerical terms. A cooling lake may have so many different aspects depending upon its use, the terrain in which it is contained, its size, etc., that its definition must necessarily be very broad.

Although the Board disagrees with the Appellate Court's findings with respect to the particular situation which was reviewed, we find it necessary to retain the existing broad definition of artificial cooling lake and to continue to apply it on a case-by-case basis. The Board, therefore, dismisses the proceedings herein.

ORDER

It is the Order of the Pollution Control Board that R77-17, Water Pollution Control Regulation Amendments: Cooling Lakes, be and is hereby dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 18th day of October, 1979 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board