

ILLINOIS POLLUTION CONTROL BOARD
July 2, 1986

FRED E. JURCAK,)
)
 Petitioner,)
)
 v.) PCB 85-137
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

This matter comes before the Board upon a June 6, 1986, Motion for Reconsideration of the Board's Opinion and Order in this proceeding dated December 20, 1985 filed on behalf of Fred E. Jurcak (Jurcak). The Illinois Environmental Protection Agency (Agency) filed its response on June 30, 1986, requesting the Board to deny Jurcak's motion. For the following reasons, Jurcak's Motion for Reconsideration is hereby denied.

On December 20, 1985, the Board affirmed the Agency's imposition of Special Condition Nos. 8 & 9 in Jurcak's NPDES permit. Special Condition No. 8 at issue here incorporates an amendment to Illinois' Water Quality Management Plan (IWQMP). The Board found that it lacked jurisdiction to review Special Condition No. 8, citing Village of Gilberts v. Holiday Park Corporation and the Illinois Environmental Protection Agency, PCB 85-96, August 15, 1985 and National Marine Service v. Illinois Environmental Protection Agency, 120 Ill. App. 3d 198, 458 N.E.2d 551 (1983). Jurcak sought review of the IWQMP amendment in the circuit court which dismissed Jurcak's complaint for lack of jurisdiction. The court, in dicta, indicated that the Board in fact had jurisdiction to consider the propriety of the IWQMP amendment at issue.*

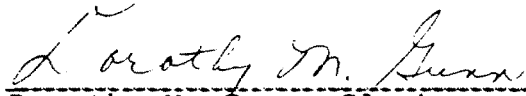
The circuit court appears to have misapprehended the limited authority granted to the Board. Nothing in the Environmental

* The Board notes that the issue of whether the Board has jurisdiction over the Agency's amendments of the IWQMP was not fully argued before the circuit court. The only issue before the circuit court was whether it had jurisdiction to rule on Jurcak's complaint. The court held that it lacked such jurisdiction. Consequently, any statement by the circuit court regarding the Board's jurisdiction over Agency amendments of the IWQMP was dicta and, therefore, not binding on the Board.

Protection Act provides for Board review of Agency decisions concerning revisions to the IWQMP. Furthermore, Agency and United States Environmental Protection Agency (USEPA) rules vest that authority solely in the Regional Administrator or the circuit court. [35 Ill. Adm. Code 351.403 and 40 C.F.R. 35.1517(c)]. The Board notes that contrary to the circuit court's conclusion, a revision of the IWQMP is not "like a simple building permit case" in which "the Board can merely say that the conditions imposed are unreasonable, and allow the permit to be issued ... and allow the Agency to clean up the plan [IWQMP] and modify it according to the [Board's] decision." If the Board were to accept this reasoning, it would enable the Board to exercise jurisdiction over the IWQMP which it clearly lacks. The Board is not evading any responsibility but believes that the only available routes of review are to USEPA or the circuit court, not to the Board. For these reasons, the Board hereby denies Jurcak's Motion for Reconsideration.

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 2nd day of July, 1986 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board