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ENVIRONMENTAL PROTECTION:
Authority of Environmental Protection
Agency to Adopt Technical Policy State-
ments Concerning Public Water Supplies

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Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

Dear Mr. Mauzy:

I have your letter wherein you ask whether the Illinois Environmental Protection Agency has the authority to adopt technical policy statements concerning public water supplies. It is my opinion that the Agency does have the authority to adopt such statements.

The Joint Committee on Administrative Rules has questioned the Agency's authority to adopt these technical policy statements. The Committee has pointed out that under section 17 of the Environmental Protection Act (Ill. Rev. Stat. 1977, ch. 111 1/2, par. 1017) the Pollution Control Board has

Michael P. Mauzy - 2.

the authority to adopt regulations concerning public water supplies and that the Board may not redelegate its authority to the Environmental Protection Agency.

The Pollution Control Board has not redelegated its authority to adopt public water supply regulations to the Agency. Rule 212A of the Board's rules and regulations on public water supplies provides as follows:

"A. The Agency may adopt criteria, published in the form of Technical Policy Statements, for the design, operation, and maintenance of public water supply facilities as necessary to insure safe, adequate, and clean water. These criteria shall be revised from time to time to reflect current engineering judgment and advances in the state of the art."

Rule 212A is a directive from the Board to the Agency consistent with the Agency's statutory authority to administer the provisions of the Environmental Protection Act relating to public water supplies and the public water supply regulations of the Pollution Control Board. In its opinion on the regulations for public water supplies, the Board discussed Rule 212A. The Board explained that Rule 212A did not redelegate the Board's rule-making authority to the Agency and that the Agency's technical policy statements were intended to inform the owners of public water supplies as to how the Agency administers the

Michael P. Mauzy - 3.

Board's regulations. The Board's opinion reads in pertinent part:

"Technical policy statements are the tools of the Agency to allow the proper administration of these rules. These statements detail what will be required of a public water supply so as to comply with these rules, and serve as a guide for proper construction and operation of facilities. Guidelines are also incorporated for the proper minimum chlorine residuals, fluoridation procedures, safety precautions, and any other pertinent specifications (R. 23, 943).

Certain witnesses expressed a fear that technical policy statements would allow the Agency to dictate all facets of public water supply and potentially interfere with normal maintenance (Ex. 29, P. 6, R. 860). This fear is unfounded. In the first instance, Rule 212 (B) allows ample time for public comment. In the second instance, if an owner of a public water supply feels that a condition to his permit was incorporated on the basis of an unjust technical policy statement, his appeal to the Illinois Pollution Control Board could very well raise this point. Technical policy statements have been used in other divisions of the Environmental Protection Agency, and would appear to be working satisfactorily."

Even without Rule 212A, the Agency has the statutory authority to adopt technical policy statements concerning public water supplies. Section 15 of the Environmental Protection Act (Ill. Rev. Stat. 1977, ch. 111 1/2, par. 1015) requires owners of public water supplies to submit plans and specifications for any public water supply installations, changes, or

Michael P. Mauzy - 4.

additions to the Environmental Protection Agency. Section 16 of the Act (Ill. Rev. Stat. 1977, ch. 111 1/2, par. 1016) authorizes the Agency to approve plans and specifications on the basis of sanitary quality, mineral quality and adequacy of the water supply. The Agency is also authorized to request owners of public water supplies which are operating to submit samples of water and reports of operation. (Ill. Rev. Stat. 1977, ch. 111 1/2, par. 1019.) The Agency's technical policy statements inform the owners of public supplies as to how the Agency carries out its duty to approve and monitor public water supplies.

In addition to its specific authority to approve and monitor public water supplies, the Agency has general authority to administer the permit system established by the regulations of the Pollution Control Board. Section 4(g) of the Environmental Protection Act (Ill. Rev. Stat. 1977, ch. 111 1/2, par. 1004(g)) provides as follows:

"(g) The Agency shall have the duty to administer, in accord with Title X of this Act, such permit and certification systems as may be established by this Act or by regulations adopted thereunder."

Title X of the Act includes section 39(a) (Ill. Rev. Stat. 1977,

Michael P. Mauzy - 5.

ch. 111 1/2, par. 1039(a)). Section 39(a) reads in pertinent part:

"(a) When the Board has by regulation required a permit for the construction, installation, or operation of any type of facility, equipment, vehicle, vessel, or aircraft, the applicant shall apply to the Agency for such permit and it shall be the duty of the Agency to issue such a permit upon proof by the applicant that the facility, equipment, vehicle, vessel, or aircraft will not cause a violation of this Act or of regulations hereunder. The Agency shall adopt such procedures as are necessary to carry out its duties under this Section. In granting permits the Agency may impose such conditions as may be necessary to accomplish the purposes of this Act, and as are not inconsistent with the regulations promulgated by the Board hereunder. * * * (Emphasis added.)

The Board has established a permit system for public water supplies. According to section 4(g), the Agency administers this system; and, according to section 39(a), the Agency is required to adopt procedures that are necessary to administer the issuance of public water supply permits. The Agency's technical policy statements are necessary in order to administer the Board's permit requirement for public water supplies. These statements provide the owners of public water supplies with a clear set of guidelines as to how the Agency administers the Board's regulations. The Board retains its rule-making authority. As pointed out in the Board's opinion

Michael P. Mauzy - 6.

on Rule 212A, an owner of a public water supply who believes that the Agency's technical policy statements incorrectly administer the Board's regulations, may appeal to the Board. The Board may then examine whether the Agency's technical policy statements are in accord with the intention of the Board's regulations.

It is, therefore, my opinion that the Pollution Control Board has not redelegated its authority to adopt regulations concerning public water supplies to the Environmental Protection Agency. The Agency's statutory powers to approve and monitor public water supplies and to administer the Board's permit requirements authorize the Agency to adopt technical policy statements for public water supplies.

This conclusion is supported by the analysis in U. S. Steel Corp. v. Pollution Control Board (1977), 52 Ill. App. 3d 1, 9. In that case it was contended that the Board's Rule 910(a)(6) redelegated the Board's authority to set effluent standards and conditions to the Agency. The court disagreed with that contention and with the earlier finding of invalidity in Peabody Coal Co. v. Pollution Control Board (1976), 36 Ill. App. 3d 5, 20. The court in U. S. Steel held

Michael P. Mauzy - 7.

that Rule 910(a)(6) was not a redelegation of the Board's rule-making authority but was, instead, a directive to the Environmental Protection Agency to carry out the Agency's statutory power to set the conditions and terms for the issuance of National Pollution Discharge Elimination System permits. Rule 212A of the Board's rules and regulations on public water supplies, similarly, is not a redelegation of the Board's authority to regulate public water supplies.

Rule 212A is merely a directive to the Environmental Protection Agency to exercise the Agency's statutory authority to adopt technical policy statements concerning public water supplies.

Very truly yours,

A T T O R N E Y G E N E R A L