

SUPREME COURT OF ILLINOIS

County of Will v. Pollution Control Board

2019 IL 122798 (Ill. 2019) · No. Nos. 122798, 122813 cons. · Decided December 10, 2019

SUMMARY

The Illinois Supreme Court reviewed the Illinois Pollution Control Board’s decision not to require groundwater monitoring at clean construction and demolition debris and uncontaminated soil fill operations. The court held that the Board’s decision was not arbitrary or capricious, affirmed the appellate court’s judgment, and affirmed the Board’s decision.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Theis; Chief Justice Karmeier; Justice Thomas; Justice Garman; Justice Neville; Justice Kilbride; Justice Burke
JURISDICTION	Illinois
DECIDED	December 10, 2019
DOCKET	Nos. 122798, 122813 cons.
DISPOSITION	affirmed
PROCEDURAL POSTURE	The State and Will County petitioned for review of an Illinois Pollution Control Board rulemaking decision that omitted proposed groundwater-monitoring requirements for clean construction and demolition debris and uncontaminated-soil fill operations. The Illinois Appellate Court affirmed the Board, and the Illinois Supreme Court granted leave to appeal and consolidated the cases.
STANDARD OF REVIEW	A Pollution Control Board rulemaking decision is reviewed under a limited arbitrary-and-capricious standard. Regulations adopted by the Board are presumptively valid, and the challenger bears a heavy burden to show that the decision was clearly arbitrary, unreasonable, or capricious. The reviewing court does not assess the wisdom of the Board's decision or reweigh the evidence.
PRECEDENTIAL VALUE	Published Illinois Supreme Court opinion; precedential
PARTIES	County of Will, Will County Land Use Department, People of the State of Illinois v. Pollution Control Board

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QUESTIONS PRESENTED

1. Whether the Pollution Control Board's decision not to adopt proposed groundwater-monitoring requirements for clean construction or demolition debris and uncontaminated-soil fill operations was arbitrary and capricious.
2. Whether the Board relied on an impermissible factor by considering whether clean construction or demolition debris and uncontaminated soil constitute waste.
3. Whether the Board failed to consider important aspects of the groundwater-protection problem, including monitoring costs and risks from older or noncompliant fill.
4. Whether the Board's explanation for omitting groundwater monitoring was contrary to the evidence or implausible.

HOLDINGS

1. The Board did not act arbitrarily or capriciously by considering the statutory status of clean construction or demolition debris and uncontaminated soil as non-waste materials. That distinction was relevant to determining what regulations were necessary to protect groundwater from those materials at fill sites.
2. The Board did not act arbitrarily or capriciously by failing to consider monitoring costs. The Board discussed the costs in its first and second orders, considered their economic effects, and incorporated the prior record into its final order.
3. The Board did not act arbitrarily or capriciously by focusing on evidence concerning fill sites operating within regulatory guidelines rather than older or noncompliant materials.
4. The Board did not act arbitrarily or capriciously by concluding that front-end certification and screening requirements sufficiently protected groundwater and that back-end monitoring was unnecessary.
5. A court reviewing the Board's quasi-legislative rulemaking decision must determine whether the decision was arbitrary and capricious, rather than substitute its judgment concerning the wisdom or weight of the Board's regulatory choices.

KEY QUOTATIONS

“We do not judge the wisdom of a decision by the Board, only whether it is arbitrary and capricious.” (¶ 43)

“The Board exercised its rulemaking authority in three lengthy and well-supported orders in which it concluded that “back-end” groundwater monitoring was unnecessary because “front-end” certification and

screening would keep contaminants out of CCDD and US fill sites and, thus, satisfy the legislature's directions in sections 22.51(f)(1) and 22.51a(d)(1)." (¶ 73)

FACTUAL BACKGROUND

Illinois directed the Pollution Control Board to adopt rules governing the use of clean construction or demolition debris and uncontaminated soil as fill material, including standards and procedures necessary to protect groundwater. The Illinois Environmental Protection Agency proposed rules requiring groundwater-monitoring wells and annual sampling, but the Board instead adopted stronger front-end testing and certification requirements and omitted the monitoring provisions. The Board concluded that the record did not establish groundwater contamination from compliant fill operations, that soil testing and certification sufficiently protected groundwater, and that monitoring could impose substantial costs on fill operations.

PROCEDURAL HISTORY

The Pollution Control Board adopted regulations requiring enhanced front-end testing and certification of clean construction or demolition debris and uncontaminated soil but rejected the Agency's proposed back-end groundwater-monitoring program. The appellate court affirmed, holding that the Board's decision was not arbitrary, capricious, or unreasonable. The Illinois Supreme Court affirmed both the appellate court judgment and the Board decision.

DISPOSITION

affirmed

CASES CITED

- *People v. NL Industries*, 152 Ill. 2d 82, 90-91 (1992)
- *Landfill, Inc. v. Pollution Control Board*, 74 Ill. 2d 541, 554 (1978)
- *Celotex Corp. v. Pollution Control Board*, 94 Ill. 2d 107, 126 (1983)
- *Granite City Division of National Steel Co. v. Illinois Pollution Control Board*, 155 Ill. 2d 149, 162, 180 (1993)
- *Central Illinois Public Service Co. v. Pollution Control Board*, 116 Ill. 2d 397, 412 (1987)
- *Monsanto Co. v. Pollution Control Board*, 67 Ill. 2d 276, 290 (1977)
- *People v. Pollution Control Board*, 103 Ill. 2d 441, 448 (1984)
- *Illinois Coal Operators Ass'n v. Pollution Control Board*, 59 Ill. 2d 305, 310 (1974)
- *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 495-96, 505-06 (1988)
- *Environmental Protection Agency v. Pollution Control Board*, 308 Ill. App. 3d 741, 751 (1999)
- *Waste Management of Illinois, Inc. v. Pollution Control Board*, 231 Ill. App. 3d 278, 284 (1992)
- *People ex rel. Madigan v. J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 7
- *Van Dyke v. White*, 2019 IL 121452, ¶ 46
- *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 132-33 (1985)

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