

BEFORE THE MISSISSIPPI ENVIRONMENTAL QUALITY PERMIT BOARD

IN RE: FORMAL HEARING REGARDING THE REISSUANCE OF SURFACE WATER WITHDRAWAL PERMIT NO. MS-SW-00173 TO THE CITY OF COLUMBUS, LOWNDES, COUNTY, MISSISSIPPI

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On April 9, 2002, the Mississippi Environmental Quality Permit Board (Permit Board) conducted an evidentiary hearing pursuant to Miss. Code Ann. §49-17-29 (Rev. 1999) concerning the Permit Board's re-issuance of surface water withdrawal permit No. MS-SW-00173 to the City of Columbus Light and Water Department (the City) on November 13, 2001. The hearing was held pursuant to Mr. Glenn Wheeler's December 13, 2001 request to hold a "formal hearing to further investigate...diminished property values, ground water contamination, air pollution, and other concerns" caused by the issuance of the permits to the City. The Permit Board previously had received prefiled written direct testimony from MDEQ staff and prefiled written direct and rebuttal testimony from the City. The appellant, Mr. Wheeler, did not prefile any testimony. At the hearing, the Permit Board allowed each party to make an opening statement, allowed each party the opportunity to cross-examine witnesses presented by the other parties, and allowed each party to make closing statements.

At the hearing, the Permit Board also considered and voted on the pollution control permits issued to the Lone Oak Energy Center on November 13, 2001. However, since two different permittees and two different types of permits (pollution control and water resources) were involved, the Permit Board ruled on each permit separately and is issuing two distinct findings and fact and

conclusions of law. This record of decision concerns only the decision regarding the City of Columbus.

At the conclusion of the evidentiary hearing, and having considered the written submissions of each party, the live testimony and presentation of statements made during the evidentiary hearing, and the MDEQ public record file in this matter, the Permit Board voted unanimously to affirm its re-issuance of the surface water withdrawal permit.

In making this decision, the Permit Board adopted staff=s recommendation to affirm the re-issuance of the permit. Specifically, the Permit Board found that the proposed water withdrawal complied with all applicable laws and regulations including:

- § Miss. Code Ann. § 51-3-7(2);
- § Miss. Code Ann. § 51-3-3(e);
- § Surface Water and Groundwater Use and Protection Regulations; and
- § Water Quality Criteria for Intrastate, Interstate, and Coastal Waters.

The Permit Board based its decision on the facts and conclusions as presented in the following documents, which are in the public record file and are incorporated herein by reference: Affidavit of David Hardin, Initial Statement of Columbus Light and Water Department filed by Fred M. Hayslett, and Rebuttal Statement of Counsel on behalf of Columbus Light and Water Department.

The Permit Board also has considered the points raised and evidence submitted by Glenn Wheeler in opposition to this permit. Wheeler raised one primary objection pertaining to the surface water withdrawal permit: That the Luxapilia Creek would not be able to sustain the amount of water proposed by the City to be withdrawn. During cross examination, David Hardin, Administrator of

the Groundwater Division of the MDEQ Office of Land and Water Resources, testified that the City had a special term and condition in its permit that prohibited any water withdrawal that would cause the Luxapalila Creek to fall below the established minimum flow, known as a “7Q10” stream measurement, to fall below 59.0 cubic feet per second. Mr. Hardin also explained that the Department usually knows in advance when a stream is approaching its established minimum or “low-flow” through stream flow monitoring and that this knowledge enables the Department, if necessary, to issue an order ceasing withdrawal when the 7Q10 level is reached. Mr. Hardin further testified that the 7Q10, the established minimum flow of a stream, for the Luxapilia was not skewed by the lack of rainfall during the recent past, as Mr. Wheeler suggested. Rather, 7Q10 is calculated over a long period of record, usually thirty years, so that extremes (usually high or low rainfall seasons) will not significantly affect the calculation.

Mr. Hardin’s affidavit filed in this matter states that this permit re-issuance is for withdrawal at an existing City of Columbus intake structure at the same rate (12,800 gallons per minute) and volume (15.0 million gallons per day) as the original permit issued in January 1986. The Permit Board, therefore, finds that the water withdrawal proposed in the City’s permit application and as conditioned in the permit, will comply with the statutes and regulations cited above.

Mr. Wheeler also questioned Mr. Hardin as to whether or not groundwater would be used to supply water to the Lone Oak Energy Center. The Permit Board realizes that the City of Columbus also has groundwater withdrawal capability but that the permit at issue during the hearing was the surface water withdrawal permit. Whether or not the City uses groundwater or surface water to comply with their agreement to provide water to the Lone Oak Energy Center is not within the Permit Board’s jurisdiction, as long as the City operates within the conditions of its permits.

The Permit Board concludes, on the basis of these considerations and MDEQ staff recommendation that the permit at issue here should be, and is, affirmed.

The appeal cost bond in this matter is set at \$100.00, pursuant to Miss. Code Ann. '49-17-29(5)(b) (Rev. 1999).

Rick Herrington, Chairman
Mississippi Environmental Quality
Permit Board

Date