

ILLINOIS POLLUTION CONTROL BOARD
December 17, 1992

SUSAN A. CURTIS AND
MARCY DIESING,

Complainants,

and

CITY OF CRYSTAL LAKE,

Intervening-Complainant,

v.

VILLAGE OF LAKE IN THE HILLS

Intervening-Respondent,

and

MATERIAL SERVICE CORPORATION

Respondent.

MATERIAL SERVICE CORPORATION,

Cross-Complainant,

v.

CITY OF CRYSTAL LAKE,

Cross-Respondent.

PCB 91-30
(Enforcement)

Order of the Board (by J. C. Marlin):

This matter is before the Board on motion to dismiss filed by Material Service Corporation (MSC) on November 20, 1992. On November 30, 1992, intervening respondent, Village of Lake in the Hills (Village) filed a response to MSC's motion. The complainants, Susan Curtis and Marcy Diesing filed a response on December 1, 1992.

MSC in its motion states that the Board should grant its motion to dismiss because this proceeding has been rendered moot. In support of this statement, MSC alleges that it has completed all of its mining operations on the land north of the Lake in the Hills airport which includes the Cohen property which is at issue in this case. (MSC Mot. at 2.) Further, MSC states that it does

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not plan any additional extraction in the area. (MSC Mot. at 2). However, MSC does state that it will be performing reclamation activities in the area. (MSC Mot. at 2.) MSC also states that McHenry County has acquired the 200 foot wide strip of land separating the Coventry Subdivision (where complainants live) and MSC's land for construction of a the Randall Road Connector. (MSC Mot. at 2.) Finally, MSC contends that because the "noise and alleged air pollution" connected with its mining operations on the land in question has ceased forever, this case is moot. (MSC Mot. at 2.)

Included with MSC's motion is an affidavit from David P. Olsen, Assistant to the Vice President of Operations of MSC. Olsen's affidavit states that he is familiar with the company's operations in the area in question and that MSC has completed mining in that area. (Affidavit at 1.) Olsen also states that MSC does not plan any further mining on that property. (Affidavit at 1.) Finally, he states that MSC is in the process of removing all equipment from the property in question. (Affidavit at 2.)

In its response to MSC's motion, Village states that it has no objection to dismissal. (Village Resp. at 1.)

The complainants in their response object to MSC's motion to dismiss. (Complainants Resp. at 1.) They argue that the scope of their complaint was never limited to the land north of the Lake in the Hills airport. (Complainants Resp. at 1.) In fact, they argue that their complaint predated MSC's entry into the area north of the airport and that their complaint includes tracts "A", "B", and "C." (Complainants Resp. at 1.) The complainants state in their response that MSC did not state in its motion that the mining in tracks "A" and "B" are completed. (Complainants Resp. at 1.) Complainants also argue that MSC has not defined "customary reclamation activities" or indicate the time when it will be performing reclamation. (Complainants Resp. at 2.) Finally, complainants argue that McHenry County's acquisition of the land separating their subdivision and MSC's land is irrelevant to this case. (Complainants Resp. at 2.)

The Board will first address MSC's argument that this case is moot. MSC's alleged completion of mining in the area in question ignores the fact that MSC's alleged past violations are still properly before the Board. The complainants are entitled to an adjudication of the case. Hearings have taken place in this case and the Board has before it a complete record. Additionally, the Board notes that the complaint and amended complaint filed by Curtis and Diesing in this case did not specify a particular piece of land where the violation was occurring. Instead, complainants allege that MSC's mining activity is causing both noise and air pollution and that the mining is interfering with complainants' lives in violation of 35

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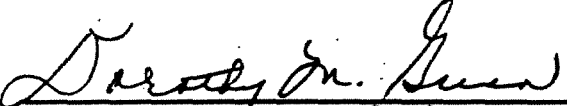
Ill. Adm. Code 900.101 and 900.102 and Sections 9(a), 23 and 24 of the Environmental Protection Act (Act). (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1009, 1023 and 1024.) (Comp. at 2.)

Additionally, the Board agrees with complainants that the purchase of the strip of land between MSC's property and the Coventry Subdivision by McHenry County is immaterial to the case at hand. Finally, the Board notes that any argument about noise or dust pollution from the planned reclamation by MSC is irrelevant to this case. The complaint was filed and the hearings were held prior to any reclamation activity; therefore, reclamation activity is not an issue in this action.

MSC's motion to dismiss is hereby denied. The Board will issue a final order and opinion in this case as expeditiously as possible consistent with its resources and decision deadlines.

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 17th day of December, 1992, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board

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