

ILLINOIS POLLUTION CONTROL BOARD  
November 7, 1991

SUSAN A. CURTIS and )  
MARCY DIESING, )  
 )  
Complainants, )  
 )  
and )  
 )  
CITY OF CRYSTAL LAKE, )  
 )  
Intervening-Complainant, )  
 )  
v. ) PCB 91-30  
 ) (Enforcement)  
 )  
VILLAGE OF LAKE IN THE HILLS, )  
 )  
Intervening-Respondent, )  
 )  
and )  
 )  
MATERIAL SERVICE CORPORATION, )  
 )  
Respondent. )

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MATERIAL SERVICE CORPORATION, )  
 )  
Cross-Complainant, )  
 )  
v. )  
 )  
CITY OF CRYSTAL LAKE, )  
 )  
Cross-Respondent. )

ORDER OF THE BOARD (by J. C. Marlin):

This case is before the Board on several motions filed by numerous parties. The motions filed by the parties are:

a Motion asking for Leave to File an Answer to the City of Crystal Lake's (the "City") complaint and a cross-complaint filed by Material Service Corporation ("Material Service");

a Motion to Intervene and a "Motion to File A Reply to Response of City of Crystal Lake to Petition to Intervene" filed by the Village of Lake in the Hills (the "Village");

a Response to the Village's Petition to Intervene and a Motion to Strike the Village's Reply filed by the City; and

a Response to the Village's Petition to Intervene filed by Susan Curtis and Marcy Diesing ("Curtis/Diesing").

The Hearing Officer in this matter provided the Board with a copy of a filing which he had received from the City entitled "Response of Intervening-Complainant to Motion of Complainant For Leave To File Its Answer and Cross-Complaint" (sic). The Board, according to the attached proof of service, was not served with that filing and a Response has not subsequently been filed with the Board even after the Board's October 24, 1991 Order and several conversations with Board staff, directing that responses be filed with the Board. The Board notes that if a complaint is filed by a person other than the Agency the Board must determine if the complaint is duplicitous or frivolous. 35 Ill. Adm. Code 103.124. Since the City filed its response with the Hearing Officer and not the Board the "Response of Intervening-Complainant to Motion of Complainant For Leave To File Its Answer and Cross-Complaint" (sic) will be disregarded. The cross-complaint, filed by Material Service, is accepted for hearing.

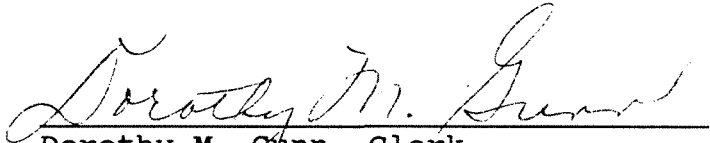
As to the remaining motions before the Board and the Hearing Officer, the Board grants the Material Service Motion for leave to file an answer to the complaint. Further, the Board grants the Motion of the Village to intervene as the Board finds that the Village could be adversely affected by a decision in this matter. The Board also grants the Village's Motion for Leave to file a Reply and denies the City's motion to strike the Reply.

The Board notes that the City, on July 25, 1991, filed a "complaint" with its motion to intervene. It is well established that "an intervenor must take the case as he finds it". (Lake States Engineering v. One Naperville Corporation, (Ill. App. 2 Dist. 1986), 102 Ill. Dec 100, 103, 499 N.E.2d 657, 660. Therefore, the intervenors, the City and the Village, must take this case as they found it. The Board further notes that the City's "complaint" merely restated the issues set forth by Curtis/Diesing and did not state new issues.

The Board again will remind the parties that proceedings before it are governed by procedural rules set forth by the Board in 35 Ill. Adm. Code 101-120 and that motions must comport with these rules including the filing of the proper number of copies. In the future, the Board will consider imposing sanctions for the failure to follow procedural rules including but not limited to assessing the cost for making additional copies to the party filing the document if the proper number of copies are not included.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Order was adopted on the 7<sup>th</sup> day of November, 1991, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board