

ILLINOIS POLLUTION CONTROL BOARD
June 6, 1991

GOOSE LAKE ASSOCIATION,)
)
 Complainant,)
)
 v.) PCB 90-170
) (Enforcement)
)
 ROBERT J. DRAKE, SR., FIRST)
 NATIONAL BANK OF JOLIET AS)
 TRUSTEE, TRUST NO. 370,)
)
 Respondent.)

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

This matter is before the Board on Respondent Robert J. Drake, Sr. and First Bank of Joliet, Trustee's ("Drake") Motion for Reconsideration filed May 15, 1991. The motion seeks to have the Board reconsider the Board's May 9, 1991 Order which denied Drake's Motion to dismiss. Drake wishes to submit additional information to show that the complaint filed by complainants is duplicitous or frivolous.

The issue of whether this matter was duplicitous or frivolous was first decided by the Board on October 25, 1990. The Board decided it was not. Then in a filing dated March 28, 1991 the Drake's raised new matters which re-opened this question. By Board Order dated April 11, 1991 the Board invited the Complainant to respond. When no response was received, the Board reconsidered the matter, and denied the motion to dismiss. The Drake's now wish to submit further information to support their claim.

The burden is upon the movant to clearly state the reasons for and the grounds upon which a motion is made. Facts asserted which are not of record in the proceeding must be supported by affidavit. 35 Ill. Adm. Code 101.242(a). Motions to strike or dismiss a proceeding must be filed with the Board within 21 days after service of the challenged document. 35 Ill. Adm. Code 101.243. As can be seen it is the movants duty to timely file and adequately support a motion directed to the Board.

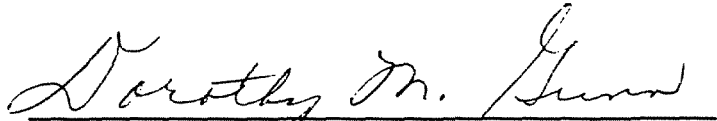
The Board has reviewed the matter of whether this case is duplicitous or frivolous no less than twice. In each, however, the Board did not find the Drake's motion to be supported by record and argument. Each was denied.

The Board now reviews the matter of whether this complaint is duplicitous or frivolous for a third time. The Drake's allege that as the complainant was an intervenor-defendant in a Grundy County Circuit Court action brought by the developers of Botomika

Subdivision (the Drake's) and the County of Grundy which was settled by agreement. The settlement agreement is attached, as is a plat map and an Illinois Department of Public Health Code. The complainant is not a party to the settlement agreement. The Drake's argue that the complainants are bound not as signatories, which they are not, but because the complainants are "collaterally estopped from raising in this action the same issues that it has previously raised, or could have raised, in the prior court action which was resolved by settlement." Our review of the submission shows little else to support the claim that the complainant is raising matters that were litigated, or could have been litigated, as an intervenor-defendant, in the Grundy County forum. The Respondent's claim is, again insufficiently supported by the facts and the record. The motion is therefore denied.

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 6th day of June, 1991 by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board