

ILLINOIS POLLUTION CONTROL BOARD
June 7, 1990

BILL ADEN, et al,)
)
)
 Petitioners,)
)
 v.) PCB 86-193
) (Enforcement)
)
 CITY OF FREEPORT,)
)
)
 Respondent.)
)

ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board on the City of Freeport's ("Freeport") Petition to Modify Order filed May 17, 1990. The petition seeks to modify the Board's Order entered September 8, 1988 assessing Freeport a penalty of ten thousand dollars (\$10,000.00). Freeport wishes to pay the penalty to the Freeport Water and Sewer Commission. The Order presently requires the penalty to be paid into the Environmental Protection Trust Fund. On May 29, 1990 the Illinois Attorney General, on behalf of The People of the State of Illinois and the Illinois Environmental Protection Agency, filed its Response to City of Freeport's Petition to Modify Order. The response objects to the relief requested by Freeport. For reasons given below, Freeport's motion to modify is denied.

Freeport argues that changed circumstances justify relief from the Board's Order. In addition to stating that it has shown good faith in complying with the Board Order through substantial compliance with the majority of its terms, Freeport argues that:

the purposes and goals of the state statute and of this Board would be better served as well directly benefiting the residents of the Respondent by permitting the Respondent to utilize the funds to pay the fine directly to the Respondent's Water and Sewer Commission so that the fine may be promptly used to rehabilitate the sanitary sewer system which was the purpose of this litigation.

Petition, p. 4

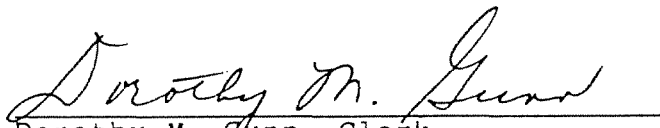
Freeport also attaches several exhibits in support of its position regarding good faith and substantial compliance. The petition, Freeport states, is filed pursuant to 35 Ill. Adm. Code 101.301.

The Attorney General's response points out that the Board's original Order in this matter was appealed by Freeport. The Second District Appellate Court affirmed the Board decision in full. The Attorney General further argues that Freeport's petition to modify does not comply with Board procedural rules. Board rules allow modification of judgments upon "newly discovered evidence which existed at the time of hearing and which by due diligence could not have been timely discovered." 35 Ill. Adm. Code 101.301 (emphasis in original). The response also states that the penalty statute provides for payment into the Environmental Protection Trust Fund and does not give the authority to designate alternative sources. Finally, the response argues that any relief given for compliance subsequent to enforcement would violate the penalty provisions of the Act.

We believe the Attorney General's response is well reasoned. To now relieve Freeport would substantially undermine the purpose for which the penalty was imposed: to aid in enforcement of the Act. While Freeport's actions appear well-designed to cure the violative situation which existed, we must point out that these acts are in response to Board order. The Board's finding that the violation deserved the penalty of ten thousand dollars is not affected by this subsequent conduct. Nor do we find support for the notion that the Board may designate the payment of its penalties to places other than the Environmental Protection Trust Fund other than that general authority which exists for designating payments to the General Revenue Fund. Therefore, Freeport's petition to modify the Board Order of September 8, 1988 is 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 7th day of June, 1990, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board