

ILLINOIS POLLUTION CONTROL BOARD
December 17, 1987

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 78-139
)
VICKERY MANOR SERVICE)
CORPORATION and NORTH HILLS)
MUTUAL SEWER ASSOCIATION,)
)
Respondents.)

DISSENTING OPINION (by J. Anderson):

I agree that the Board should consider dismissing this case. However, I disagree with the Board majority's dismissal action today, essentially on its own motion, and without an explanatory opinion. I believe the Board should instead have first issued an interim order stating its intent to do so and why, and giving the Agency an opportunity to respond by a date certain.

The instant motion before the Board did not request dismissal of the case; indeed, since North Hills Mutual Sewer Association (North Hills) was requesting dismissal as a party, it was hardly in a position to request dismissal of the case against the Vickery Manor Service Corporation (Vickery Manor), a party the movant did not represent.

The Agency had no notification of the Board's intent to make a final determination listed on the agenda, and no reason to expect the Board to reach out beyond the pending motion of North Hills. The Agency's lack of response on the pending motion could be construed only as a lack of Agency objection to going back to "square one", i.e., the situation as it existed prior to the voluntary substitution of North Hills for Vickery Manor as the respondent pursuant to the settlement agreement.

I believe the Board majority's action, taken without warning and without explanation, was not proper. Section 33(a) of the Act mandates that in all its final determinations the Board shall "file and publish a written opinion stating the facts and reasons leading to its decision." That is the very least the Board should have done.

For these reasons, I dissent.

Joan G. Anderson
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I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 18th day of December, 1987.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board