ILLINOIS POLLUTION CONTROL BOARD April 22, 1976

METROPOLITAN SANITARY DISTRICT OF)

GREATER CHICAGO, A municipal)

corporation,)

Petitioner,)

v.)

PCB 75-338

ENVIRONMENTAL PROTECTION AGENCY,)

Respondent.)

SUPPLEMENTAL OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

This matter comes before the Pollution Control Board (Board) upon the April 1, 1976, motion of the Environmental Protection Agency (Agency) to reconsider and vacate the Board Orders herein, of February 26 and March 11, 1976. The Agency makes this motion because it feels the Board has "overlooked and misapprehended" certain issues raised in this proceeding. The Agency states that the "Board should not consider" the impact of permit conditions on "unpermitted activities." The "unpermitted activities" are those which are under review in a separate action before this Board appealling the denial of Metropolitan Sanitary District's (MSD) Comprehensive Permit (PCB 75-133). It is implicit in the Agency's argument that the stricken conditions do not prejudge the aforementioned permit appeal. Yet the Comprehensive Permit includes "Sludge transportation system, sludge storage facilities and sludge application fields...." (Permit #1974-DB-444-OP). The Board will not rule on each of the sub-issues raised by the Agency. However the Board holds that the conditions stricken by the Board, herein, were beyond the scope of the permit sought. Their sole purpose was to control activities upon property which are the subject of a separate permit. The arguments the Agency propounds in its motion are, at best, spurious.

Having determined that the stricken condition was beyond the power of the Agency to impose in the instant permit, the Board need not decide herein whether MSD has carried its burden of proof as to the issues concerning violation of Sections 9(a) or 12(b) of the Act

with regard to the operation of the sludge storage facitilies. The issue of the Agency's power to impose said conditions is dispositive. To decide the other issues raised would only add dictum to the Opinion.

In consideration of the foregoing, the Board will deny the Agency's Motion to reconsider and vacate.

IT IS SO ORDERED.

Mr. Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Supplemental Opinion and Order were adopted on the ________, 1976 by a vote of _________,

Christan L. Moffett, Clerk
Illinois Pollution Control Board