

ILLINOIS POLLUTION CONTROL BOARD
March 26, 1975

PEOPLE OF THE STATE OF ILLINOIS)
)
 Complainant,)
)
 v.) PCB 75-95
)
STAR UTILITY COMPANY, an Illinois)
corporation; and MIDWEST UTILITY)
COMPANY, an Illinois corporation,)
)
 Respondents.)

ORDER OF THE BOARD (by Mr. Zeitlin)

The Complaint in this matter was filed by the Attorney General on February 26, 1975. On March 11, 1975 Respondents filed a Motion to Dismiss alleging various defects in the Complaint. The Attorney General filed a Response in Opposition to Respondents' Motion to Dismiss on March 12, 1975.

Respondent's Motion to Dismiss alleged the following points:

I. The Attorney General has no legal authority to bring an enforcement action before the Pollution Control Board.

II. The Attorney General's representation of the Illinois Commerce Commission, which regulates Respondent as a public utility, may present a conflict of interest in the Attorney General's prosecution of this matter before the Board.

III. The Complaint in the matter violates Board Procedural Rule 304(c)(2) in that it insufficiently specifies the dates, location, events, nature, extent, duration and strength of the discharges complained of; Respondents have not been adequately advised of the full extent and nature of the matters complained of, and is not therefore given an adequate opportunity to prepare a defense.

IV. Rule 305 of Chapter 6: Public Water Supplies of the Board's Rules and Regulations does not become effective as regards existing public water supplies for a period of one year after the effective date of that chapter. Respondents were and are an existing public water supply, and therefore should not be subject to prosecution under Rule 305 for a period of one year after December 21, 1974.

V. The complained of offensive odor and taste are merely sensory perceptions; such sensory perceptions do not fall within the ambit of Section 18 of the Environmental Protection Act and cannot constitute a violation thereof.

VI. The various Sections of the Environmental Protection Act, the Board's Rules and Regulations, and the Department of Public Health Public Water Supply Rules and Regulations are all so vague, indefinite, ambiguous, and overly broad as to be unconstitutional.

VII. The Board does not have the power to grant as relief a cease and desist order, or the imposition of a penalty.

The Board has in previous cases considered most of the allegations in this motion. The majority of Respondents' motion, (paragraphs I, II, VI and VII, above), can be denied without citation or discussion. Paragraph III is unfounded insofar as Respondent is in fact given adequate notice of the matters with which it is charged, and is given sufficient opportunity to prepare its defense; this portion of the motion must also be denied. Paragraph V, (regarding offensive odor and taste as violation), the Board will consider when reaching its decision on the merits of this matter.

Paragraph IV of Respondents' Motion, however, will be granted. The complaint herein alleges on its fact that Respondents have operated a public water supply since at least July 1, 1970, and has continued to do so until the present. The Board's Public Water Supply Regulations were adopted on December 21, 1974. Rule 305 of the Public Water Supply Regulations states that Rule shall not apply to existing public water supplies for a period of one year after its effective date. For this reason, paragraph 7 of the Attorney General's complaint, alleging a violation of Rule 305, must be dismissed.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify the above Order was adopted on the 26th day of March, 1975 by a vote of 4 to 0.

Christan L. Moffett (sr)
Christan L. Moffett, Clerk
Illinois Pollution Control Board