

ILLINOIS POLLUTION CONTROL BOARD
September 7, 1978

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-112
)
 METROPOLITAN SANITARY DISTRICT OF)
 GREATER CHICAGO,)
)
 Respondent.)

ORDER OF THE BOARD (by Mr. Goodman):

On August 24, 1978, the Environmental Protection Agency (Agency) filed a Motion for Leave to Take Interlocutory Appeal and an Interlocutory Motion to Reverse Hearing Officer. On August 30, 1978, the Metropolitan Sanitary District of Greater Chicago (MSD) submitted a Response to Complainant's Motion to Reverse Hearing Officer, in which MSD stated it did not oppose the Agency's Motion for Leave to Take Interlocutory Appeal but did oppose reversal of the Hearing Officer.

The Board hereby grants the Agency leave to take the interlocutory appeal. The ruling in question involves the admissibility into evidence of events subsequent to the filing of the Complaint in this matter. The Board on August 18, 1977, ordered that evidence of all events subsequent to the filing of the Complaint be received as an offer of proof. The Agency, therefore, submitted its evidence on events subsequent to the filing of the Complaint as an offer of proof. Such evidence consisted of testimony by "occurrence" witnesses about odors which may have emanated from MSD's property after the date of the Complaint. However, on August 16, 17 and 18, 1978, the Hearing Officer received into evidence testimony on behalf of the MSD relating to the post-Complaint time period. The Hearing Officer did not require such evidence to be submitted as an offer of proof, and it is this ruling by the Hearing Officer which the Agency seeks to reverse. MSD points out that it offered the evidence in question in its defense pursuant to Section 33(c) of the Environmental Protection Act (Act).

The Board hereby upholds the Hearing Officer's ruling. We find that evidence of post-Complaint events submitted for the purpose of mitigation under Section 33(c), as opposed to evidence submitted for the purpose of proving a violation after the date alleged in the Complaint, need not be submitted as an offer of proof. The Board notes that any evidence submitted by the Agency as an offer of proof which bears on the Section 33(c) factors will be considered by the Board in making its final determination.

IT IS SO ORDERED.

Mr. Dumelle abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 7th day of September, 1978 by a vote of 3-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board