

ILLINOIS POLLUTION CONTROL BOARD
December 2, 1976

COMMITTEE TO SAVE OUR ENVIRONMENT, et al.,)
)
 Complainants,)
)
 v.) PCB 75-443
)
 HARRY A. CARLSON and DONALD F. KREGER, d/b/a)
 SOUTH SUBURBAN LAND DEVELOPMENT CO., and the)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondents,)
)
 and)
)
 PEOPLE OF THE STATE OF ILLINOIS,)
)
 Intervenor.)

ORDER OF THE BOARD (by Mr. Zeitlin):

Subsequent to the entry of our Interim Order of October 14, 1976 in this matter, which Order granted, sua sponte, leave for Complainants to amend their Complaint, Complainants filed a Motion for Stay on November 12, 1976. Complainants base this Motion on the pendency in the Circuit Court of Cook County of a Complaint for Declaratory and Injunctive Relief against Respondents here, the Illinois Department of Mines and Minerals, and this Board.

Respondent Carlson filed a Response in opposition to Complainants' Motion on November 17, 1976. That Response renews Respondents' Motion to Dismiss.

Intervenors People of the State of Illinois filed a Response in opposition to Complainants' Motion on November 22, 1976. That Response argues that inasmuch as the above Circuit Court action was initiated by Complainants, grant of any stay of the instant proceedings based on the pendency of that action would "trivialize the jurisdiction of the Board," rewarding Complainants' "forum shopping."

Intervenors People of the State of Illinois also move for leave to withdraw as Intervenors and, based on the Board's Order of October 14, 1976, further argue that the entire proceeding should be dismissed.

Intervenors also note that Complainants' Motion for Stay does not indicate service on all parties (in particular, Respondent Environmental Protection Agency), rendering it defective in its entirety and without effect.

We agree with the latter contention. Procedural Rule 308(a) specifically requires service on all parties. We are not presented with any compelling reason to waive that requirement. As noted by Respondent Carlson, cause 76 L 18994, Committee, et al., v. Carlson, et al., is pending at Complainants' election; the case was filed subsequent to the entry of the Board's October 14, 1976 Order. Although this Board has previously held that jurisdiction in matters involving administrative review of Agency-issued permits lies with the Board, we cannot coerce prosecution in this forum. Complainants retain the option of attempting judicial enforcement of rights under the Environmental Protection Act. But exercise of that option when Complainants are already before this Board cannot provide cause for a stay, when Complainants request that a stay be granted to prevent a multiplicity of action and a duplication of effort. Complainants have chosen their forum: the Circuit Court of Cook County.


Our October 14, 1976 Order noted (at p. 3) that the Complaint in this matter is not "sufficiently specific to state a cause of action independent of the allegation that the Agency gave no consideration to land use, etc." (Emphasis in original.) We allowed time for amendment to correct that lack of specificity.

Inasmuch as Complainants have failed to timely file an Amended Complaint or otherwise correct existing defects in the Complaint, and have chosen to prosecute their claim in another forum, Complainants' Motion for Stay must be dismissed, and Respondents' Motion for Dismissal of the case shall be granted.

IT IS SO ORDERED.

Mr. James Young abstained.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 2nd day of December, 1976, by a vote of .



Christan L. Moffett, Clerk
Illinois Pollution Control Board