

ILLINOIS POLLUTION CONTROL BOARD
August 21, 1980

VILLAGE OF HILLSIDE, a Municipal)
Corporation, and SAVE THE TOWNSHIP)
OF PROVISO, INC., a Not-for-profit)
Illinois Corporation,)
Complainants,)
v.) PCB 80-60
JOHN SEXTON SAND & GRAVEL CORP.,)
an Illinois Corporation, BROWNING-)
FERRIS INDUSTRIES OF ILLINOIS,)
INC., an Illinois Corporation, and)
CONGRESS DEVELOPMENT COMPANY, an)
Unknown Corporation,)
Respondents,)
CITIZENS FOR A BETTER ENVIRONMENT,)
Intervenor.)

ORDER OF THE BOARD (by I. Goodman):

On July 11, 1980 the Respondents filed a motion to strike Count III of the amended complaint which was filed June 16, 1980. Count III alleges violation of sections of the Illinois Environmental Protection Act (Act) and the Board's Chapter 7: Solid Waste Rules and Regulations (Rules). Sections 2(b), 3(1) and 20 of the Act contain no rules which Respondents could conceivably violate. Section 21(f) of the Act is unrelated to the allegations. Rule 207 applies only to the Illinois Environmental Protection Agency (Agency), which is not a party. Rule 314 provides for approval of alternative modes of operation by the Agency and there is no allegation that such have not been approved.

Complainants have attached to the complaint copies of a zoning ordinance and map (Ex. 25, 26). The Board is without authority to enforce this ordinance. These exhibits are not written instruments upon which the claim is founded (Section 36 of the Illinois Civil Practice Act, Ill.Rev.Stat. 1979, ch. 110).

Because of the above deficiencies, Count III is stricken. Complainants will be granted leave to amend again within twenty-one days. If they do so, the Board requests that Complainants shorten their pleadings. Complainants will have an opportunity to introduce evidence at a hearing. Respondents' July 29, 1980 Motion to Reply to Response is granted; Complainants' July 23, 1980 motion to extend time to file memorandum opposing motion to strike is granted.

On July 25, 1980 Respondents filed a renewed motion to reconsider the Board's denial of Respondents' motion to dismiss Count I (Orders of May 1 and May 29, 1980). The renewed motion is denied. Complainants' August 6 motion to strike the motion is denied. Respondents' August 13 motion for leave to reply is granted. The findings of the Illinois Commerce Commission in both 79-0291 and 80-0119 related to whether the proposed land use by Commonwealth Edison's transferee Sexton, et al. was a legal use and to whether Commonwealth Edison's transfer of its landfill permit without the approval of the Commission either violated §27 of the Illinois Public Utilities Act or constituted the conveyance of a property right. The Commission's findings were not made under the Illinois Environmental Protection Act and did not determine the issues under that Act of (1) whether Commonwealth Edison had authority to transfer the landfill permit, and (2) whether Sexton, et al. had authority to sign as operator of the site.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 21st day of August, 1980 by a vote of 5-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board