

ILLINOIS POLLUTION CONTROL BOARD
March 9, 1989

NORTHERN ILLINOIS ANGLERS')
ASSOCIATION, an Illinois)
Corporation,)
)
Complainant,)
)
v.) PCB 88-183
)
THE CITY OF KANKAKEE,)
a Municipal Corporation,)
)
Respondent.)

ORDER OF THE BOARD (by J. Marlin)

On February 6, 1989, the City of Kankakee (Kankakee) filed a Motion for Reconsideration concerning the Board's Order of January 5, 1989. By its Order of February 23, 1989 the Board granted Northern Illinois Anglers' Association (NIAA) an extension of time in which to file a response to Kankakee's motion. On March 1, 1989, NIAA filed a Motion for Leave to Amend Complaint, and NIAA submitted its response on March 2, 1989.

Kankakee requests that the Board dismiss NIAA's complaint with regard to the fecal coliform allegations. Attached to Kankakee's motion is a "Petition to Enforce Contingent Penalty" of the circuit court's consent decree which, according to Kankakee, "is to be filed by plaintiff People of the state of Illinois, ex rel. William E. Herzog and the Illinois Environmental Protection Agency" in the circuit court case #87-CH-75. That docket number refers to the case which was the subject of the May 26, 1987 consent decree. Kankakee asserts that the circuit court has retained jurisdiction concerning alleged violations of the fecal coliform effluent limitation for the months following January 1988. Kankakee also quotes the consent decree which states:

[B]eginning January 1, 1988, Kankakee shall pay a fine of FIVE HUNDRED DOLLARS (\$500.00) where the discharge from the Kankakee Regional Treatment Facility exceeds the geometric mean for fecal coliform of 400/100ml.

Essentially, NIAA responds by stating that the Petition to Enforce Contingent Penalty does not address the allegations which are found in NIAA's complaint. Also, NIAA states that Kankakee presents no evidence to show that the Petition to Enforce Contingent Penalty has been filed with the circuit court or that the circuit court has issued an order in response to such a petition.

Nothing new has been presented to the Board to indicate that at the time of the filing of NIAA's complaint the fecal coliform allegations contained in that complaint were duplicitous of another pending circuit court action. Kankakee relies upon the terms of the May 29, 1987 consent decree and the assertion that the People of the State of Illinois will, sometime in the future, file a petition for penalties under that consent decree based on alleged fecal coliform violations. In its Order of January 5, 1989, the Board addressed the issue of the consent decree's impact on NIAA's complaint. The Board finds no reason to alter that analysis even in light of the possibility that a petition to enforce the terms of the consent decree might be filed in the circuit court by the People of the State of Illinois.

Kankakee's motion is denied.

As to NIAA's motion to amend its complaint, that motion is granted. The Board notes that a hearing has been scheduled for March 20, 1989. The Board's prompt disposition of this motion will aid in allowing that hearing to proceed without a continuance. Kankakee has not filed a response to NIAA's motion to amend. Given that the amendment does not significantly alter the issues of the proceeding, the Board finds that no undue surprise will result from allowing the amendment.

IT IS SO ORDERED.

J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 9th day of March, 1989, by a vote of 6-1.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board