ILLINOIS POLLUTION CONTROL BOARD
November 23, 1971

RICHARD P. GLOVKA	)	
	)	
	)	
v.	)	# 71-269
	)	
	)	
NORTH SHORE SANITARY DISTRICT et al.	)	

Opinion and Order of the Board on Motions to Dismiss (by Mr. Currie):

This citizen complaint alleges violations of the Environmental Protection Act and of our order in # 70-7, League of Women Voters v. North Shore Sanitary District (March 31, 1971), with respect to new connections to sewers tributary to overloaded treatment plants. A flood of motions to dismiss has resulted from parties other than the District itself.

Various legal and constitutional arguments are raised that are without merit. Those relating to the Board's authority to act as a tribunal or to impose money penalties have been disposed of by earlier decisions. See EPA v. Modern Plating Corp., # 71-38 (April 28, 1971). The suggestion that federal law forbids us to concern ourselves with navigable waters such as Lake Michigan is flatly contrary to the federal statutes, which expressly direct us to do so. The standing of the complainant is clear; the Act allows any citizen to file a complaint. It is also suggested that our original March 31 order was invalid, but we disagree for the reasons there stated. Any respondent is free to raise in defense the existence of an arbitrary or unreasonable hardship, cf. Wachta v. EPA, # 71-77 (July 12, 1971), but this must be affirmatively proved at the hearing, and, in the case of two of the present respondents, has been considered before. See Bederman v. EPA, # 71-173 (August 5, 1971), and Kaeding v. EPA, # 71-133 (August 5, 1971). The notion that because not every violator can be prosecuted all must go free, also suggested, needs no response.

It is contended that our order did not preclude new connections to existing sewers or by persons who had earlier been granted permits by the Sanitary Water Board. If this

were true, it would not be grounds for dismissal, since it would remain a question of fact whether or not each respondent was within an exempted category. But the contention is incorrect. The order is absolute: "The District shall not permit any addition to present sewer connections, or new sewer connection, to its facilities . . . ." The age of the sewer is immaterial; new connections are not to be made. And, contrary to the argument here made, a permit is not a license to violate the law; only a variance duly granted by this Board can authorize doing what the law forbids. There is nothing vague about this order, as is suggested. It flatly and absolutely forbids new connections.

Against the District, therefore, a cause of action is clearly stated. The District was specifically ordered not to allow new connections; it has authority under Ill. Rev. Stat. ch. 42, sec. 283.2 to deny connections to any tributary sewers operated by others; yet, if the allegations are proved, in several instances rather than prevent such connections, the District gave them its official blessing. A hearing is in order to determine the truth of these allegations.

It is further argued that, since only the District was a party to the earlier proceeding and only the District was directed by the earlier order not to allow connections, only the District can be guilty of violating the order. But we need not delve into the question whether and in what circumstances a person not named in an order can be held responsible for inducing or abetting in its violation, for the complaint quite clearly charges that each of the respondents has violated the statute itself. There is no doubt that the statute applies to all of the respondents; it applies to everybody. It proscribes water pollution, either actual or threatened, and we found in the League of Women Voters case, above, that new connections would worsen the existing pollution. It is open to persons not bound by the order in that case to show that this is not so, but the allegation that new connections threaten or cause water pollution is sufficient to justify a hearing to determine the truth of the allegation.

Exactly what acts constitute a threat of water pollution is a question on which the illumination cast by concrete facts would be helpful. It is argued that all that one respondent did was to ask whether or not a connection was allowed. We agree that, if this is proved, it would demonstrate that no violation occurred. But the complaint alleges that each of the

individual respondents' requests was approved by the Sanitary District, and that the net effect was at least a threat of water pollution. Since a logical consequence of receiving approval to make a connection is to proceed to make it, we think the complainant should be given the opportunity to prove that a connection either has been or is about to be made. The severity as well as the inadequacy of ordering a disconnection of illegally attached sources demonstrates that we cannot insist on waiting until after pollution has been caused before issuing a preventive order. That is what the statutory word "threaten" is all about. And plainly it is no defense that one may have relied upon the approval of the Sanitary District; it is every citizen's obligation to obey the law.

The allegations with regard to the Village of Lake Bluff appear chiefly to be based upon a number of communications in which the Village is said to have forwarded individual requests for connections to the District. This alone cannot constitute a violation; everyone has a right to ask for advice. If, however, the complainant can show that the Village allowed or threatened to allow the illegal connections here alleged, which it had the authority and duty to prevent if they threatened or caused water pollution--and this again is a logical inference from the allegations of Village request and District approval--, then a case will have been made. Again we think a hearing is the place to determine just what did occur.

Several factual defenses, relating to such matters as the ownership of property and the duties of the Village Administrator, can be determined only after the hearing.

The motion to dismiss with regard to the respondent Raymond Anderson, tragically killed in an aircraft accident, is granted. In all other respects the motions to dismiss are denied.

There was also a motion to disqualify the hearing officer on the ground that he had once been a litigant before this Board. This motion was properly denied. The matter in which he appeared was entirely unrelated to the present case; there is no suggestion he has demonstrated anything but the utmost fairness in dealing with this case. We cannot be expected to disqualify as hearing officers everybody with enough concern over pollution generally ever to have appeared before the Board. In any event, the decision will be made by this Board and not by the hearing officer.

We note that argument on some of the present motions has been set for December 6. The parties are free to renew their motions with further amplification then or later, but it is the Board's order that the hearing scheduled for December 14 proceed without delay for the reasons given in this opinion.

The Environmental Protection Agency's request to intervene is granted. The participation of the Agency is important, as indeed at least one of the respondents suggested. This intervention shall not be permitted to delay the proceedings. The motion to divide this case into several is denied. The issues are simple, and delay is not called for. The motion for trial by jury is also denied.

Mr. Kissel took no part in the consideration or decision of this case.

I, Christan Moffett, Acting Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order on Motions to Dismiss this 23 day of November, 1971.

Christan Moffett