

ILLINOIS POLLUTION CONTROL BOARD
December 20, 1990

BILL ADEN, et al.,)	
)	
Complainants,)	
)	
v.)	PCB 86-193
)	(Enforcement)
CITY OF FREEPORT,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. C. Marlin):

This matter is before the Board on Respondent's Second Petition to Modify Order filed November 15, 1990 by the City of Freeport ("Freeport"). On December 17, 1990 the Board received a Notice of Withdrawal of Appearance By Attorney Sidney Margolis For Certain Petitioners and Request For Extension of Time. On December 19, 1990 a letter filing on behalf of Complainants Bill Aden and John and Velma Schroder was filed with the Board. The letter filing also requested an extension of time to respond to Freeport's filing. Because of the result reached today, the Board takes no action on these requests for extension. For reasons given below, Freeport's motion to modify is denied.

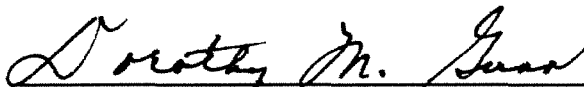
Freeport wishes to extend the December 31, 1990 compliance deadline imposed by the Board in this citizen enforcement case "in order to complete corrections for problems newly discovered since the entry of . . . the Board Order [September 8, 1988]." By that Order Freeport was to undertake "appropriate actions" including sewer rehabilitation, in order to achieve compliance with the Illinois Environmental Protection Act and Board regulations. Respondent states it has discovered additional problems which must be corrected in order to comply with the Order. These additional problems, Freeport states, were not known to it or to the Board on the date of hearing on this matter and could not have been discovered by use of due diligence. Freeport argues that 35 Ill. Adm. Code 101.301 authorizes the modification of a prior Board Order based upon "newly discovered evidence which existed at the time of the hearing and which by due diligence could not have been timely discovered." 35 Ill. Adm. Code 101.301(b).

The Board notes initially that a motion for relief under the provision relied upon by Freeport must be brought within one year after the entry of the order. 35 Ill. Adm. Code 101.301(d). Respondent's motion comes some fifteen months too late to utilize this provision for relief. Even ignoring this fact for the moment, however, the Board would be extremely reluctant to extend the ultimate date for compliance based upon the mere record which

was created by the filing of this motion to modify. At minimum, a review of the compliance plan and the request to extend this compliance date as proposed should be subject to review by the public and input from the Illinois Environmental Protection Agency. We believe the proper way to accomplish this is through a petition for variance from the Board Order. The City of Freeport's Motion to Modify Order is therefore denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 20th day of December, 1990 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board