

ILLINOIS POLLUTION CONTROL BOARD  
March 23, 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 March 17, 1989, the City of Kankakee (Kankakee) filed a Motion for Leave to File Response to Amended Complaint. Also, Kankakee filed an Answer to Amended Complaint (Answer). The motion for leave to file is granted.

The Board notes that the hearing scheduled for March 20th was continued at the request of Northern Illinois Anglers' Association (NIAA). Another hearing has been scheduled for May 15, 1989.

Given the different numbering of the original Complaint (filed November 7, 1988) and Amended Complaint (filed March 1, 1989), Kankakee's Answer appears to be answering NIAA's original complaint, not the amended complaint. At the conclusion of the Answer, Kankakee requests that NIAA's Amended Complaint "be dismissed and costs assessed against the petitioner".

The Answer also asserts that on February 7, 1989, the circuit court of Kankakee County issued an Order enforcing the fecal coliform provisions of the May, 1987 consent decree. Attached to the Answer is a copy of the February 7th Order. In its Order of March 9, 1989, disposing of Kankakee's February 6th Motion for Reconsideration, the Board noted Kankakee's allegation (at that time) that a petition to enforce the consent decree was "to be filed" with the circuit court. The Board, in part, based its March 9th decision on the uncertainty of such a petition. Apparently, though, such a petition was filed and ruled upon by the circuit court. Also, as a part of NIAA's response to the Motion for Reconsideration, NIAA stated that Kankakee had not shown that a petition to enforce the consent decree had been filed with the circuit court. Now, Kankakee reasons that given the February 7th circuit court ruling, NIAA's complaint should be dismissed.

Given that Kankakee's Answer presents the February 7th circuit court order and requests dismissal and assessment of costs against NIAA, the Board construes Kankakee's March 17, 1989 filing as a motion. As a result, NIAA is given until April 4, 1989 to file a response.

Finally, the Board seeks clarification of the exact contents of NIAA's Amended Complaint. On March 1, 1989 NIAA filed a Motion for Leave to Amend Complaint. The Board granted that motion by its Order of March 9, 1989. The March 1 filing states that it seeks an amendment of "paragraph 13" of the original complaint to add the words "fecal coliform" to the phrase concerning the alleged daily violations. Attached to the motion was a copy of an "Amended Complaint" which deleted portions of the original complaint which were dismissed by the Board's January 5, 1989 Order. Paragraph 11 of the Amended Complaint corresponded to paragraph 13 of the original Complaint. The Board assumed that the "fecal coliform" language would be considered added to the new paragraph 11, if the amendment were allowed.

However, on March 20, 1989, the Board received another copy of the Amended Complaint. The March 20th version of the Amended Complaint is identical to the March 1 version except that paragraph 11 of the March 20th version does not contain the words "fecal coliform", the addition of which was allowed by the Board's March 9th Order.

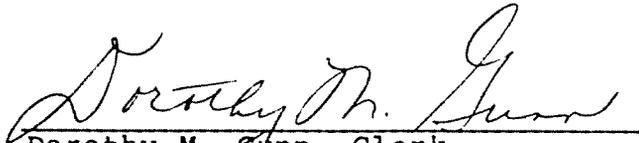
At the present time, the Board considers NIAA's amended complaint to be the March 1 Amended Complaint containing a paragraph 11 which reads as follows:

11. That respondent's monthly Discharge Monitoring Reports for the month of January 1988 through the month of July 1988 (see Exhibit C attached hereto and forming a part hereof), submitted to the Illinois Environmental Protection Agency reflect monthly averages indicating that numerous and other violations of daily fecal coliform discharge standards occurred during said period.

If this does not reflect the desired position of NIAA, NIAA should make the appropriate filing also by April 4, 1989.

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 23<sup>rd</sup> day of March, 1989, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board