

ILLINOIS POLLUTION CONTROL BOARD
July 19, 1984

D. TIMOTHY EAKER AND CONNIE EAKER,)
)
Complainants,)
)
v.) PCB 84-80
)
COUNTY OF KANKAKEE AND)
BOURBONNAIS TOWNSHIP,)
)
Respondents.)

ORDER OF THE BOARD (by J. D. Dumelle):

This matter comes before the Board upon a complaint filed by D. Timothy and Connie Eaker on June 26, 1984, and a July 18, 1984 motion to dismiss filed on behalf of the County of Kankakee alleging that the Board is without "authority or jurisdiction to hear" this enforcement action which it alleges is in the nature of a mandamus action. The motion also requests that costs be assessed to the complainants, but that request was orally withdrawn by the County at today's Board meeting, and the Board will not rule upon it.

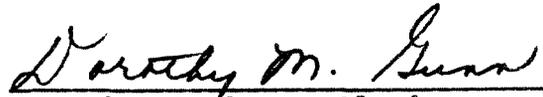
The complainants allege that the County and Bourbonnais Township have failed to enforce the "County Codes" applicable to septic tanks, thereby presumably, causing or allowing pollution. The owners of the septic tanks have not been named as parties and are not even identified in the complaint, although they are indicated to be "homeowners."

The Board cannot, on the basis of the complaint before it, determine that it has jurisdiction to decide this matter. If the "homeowners" had been identified, and if the complaint had named them as respondents who were causing or allowing pollution under specific provisions of the Board rules or the Environmental Protection Act, then the Board would clearly have jurisdiction. Upon a finding of violation it could order those homeowners to cease and desist and could order penalties. It is the responsibility of the Eakers to file a complaint which contains sufficient allegations of fact and law to give notice to the respondents of what actions are alleged to have resulted in a violation of specified Board rules or provisions of the Act and to establish the Board's jurisdiction. However, that has not been done. The motion to dismiss is hereby granted, with leave for the Eakers to file a complaint which is sufficient for the Board to determine that it has jurisdiction to decide the case.

IT IS SO ORDERED.

Board Member J. Anderson dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Order was adopted on the 19th day of July, 1984 by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board