

ILLINOIS POLLUTION CONTROL BOARD
March 20, 1980

VILLAGE OF MONTGOMERY,)
a Municipal Corporation,)
)
Complainant,)
)
v.) PCB 79--269
)
AURORA SANITARY DISTRICT,)
a Municipal Corporation,)
)
Respondent.)

ORDER OF THE BOARD (by Dr. Satchell):

On December 18, 1979 the Village of Montgomery (Village) filed a complaint naming as Respondent the Aurora Sanitary District. The complaint alleges violations of Section 12 of the Environmental Protection Act and Rules 601 and 602 of Chapter 3: Water Pollution. On February 7, 1980 the Hearing Officer allowed three persons to intervene as Respondents: Aurora Venture, a joint venture of Metropolitan Structures, Inc., and New York Project, Inc., a New York corporation; Urban Investment & Development Co., a Delaware corporation; Frederick H. Prince and William Norman Wood Prince, as Trustees under Trust Indenture No. 5814222. On February 21, 1980 the intervenors filed a Motion to Strike Portions of the Complaint and a Motion to Make More Definite and Certain. On February 29, 1980 the Village filed a response.

In paragraphs E and I of its prayer for relief the Village has requested that the Board do things which under Section 4(e) of the Act are beyond its statutory authority. Paragraph K requests relief directed against a private non-party. Paragraphs B, F, G and H request relief directed against the Environmental Protection Agency which is not a party. Paragraphs F, G and H in addition request modification of NPDES permits although there are no allegations relating to these permits in the complaint. Paragraphs J and L request relief in proceedings to which the Complainant is not a party. All of the prayer for relief will be stricken except paragraphs A and C.

The Village attached to the complaint as Exhibit A a twenty-nine page document entitled, "Report to the Village Board of Montgomery on Sanitary Sewer Backups and Associated Problems along Sherman Avenue and Other Areas in the Spring of 1979." To the extent the complaint relies on Exhibit A to define

the "southeast interceptor" sewer and to specify dates of violations, etc., it should be made more definite.

Paragraphs 6, 7 8 and 9 contain allegations involving instances of sewer backups. There are obvious contradictions involving names and addresses which should be clarified. Furthermore, the complaint contains no allegation that Respondents violated the Act or Rules by causing these backups. Therefore paragraphs 6, 7, 8 and 9 are stricken.

Paragraph 11 contains a general allegation of violation of the Act and Rules with no dates or other details specified as required by Procedural Rule 304(a)(2). Paragraph 11 will therefore be stricken.

With the above stricken from it the complaint does not state facts upon which the Board could enter an Order. The complaint is stricken. This case will be subject to dismissal unless an amended complaint is filed within thirty-five days of the date of this Order.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 20th day of March, 1980 by a vote of 4-0.

Christan L. Moffett *su*
Christan L. Moffett, Clerk
Illinois Pollution Control Board