

ILLINOIS POLLUTION CONTROL BOARD
March 5, 1998

VILLAGE OF ADDISON,)
)
 Complainant,)
)
 v.) PCB 98-104
) (Enforcement - Water)
 CITY OF WOOD DALE,)
)
 Respondent.)

ORDER OF THE BOARD (by G.T. Girard):

On February 5, 1998, the Village of Addison (Addison) filed a complaint with the Board. The complaint alleges that the City of Wood Dale (Wood Dale), without a permit, constructed a sanitary sewer extension into the facility planning area (FPA) of Addison. The FPA for a community is identified in the Illinois Water Quality Management plan which is created and implemented by the Illinois Environmental Protection Agency (Agency). On February 18, 1998, Wood Dale filed a motion to dismiss the complaint and on February 27, 1998, Addison responded to the motion. For the reasons discussed herein, the Board grants the motion to dismiss.

The complaint filed by Addison asserts that pursuant to the Illinois Water Quality Management plan, FPAs were established in 1979 for Wood Dale and Addison. Comp. at 2. Wood Dale has attempted to modify its FPA, but those requests have been denied by the Agency. Comp. at 2. Addison asserts that Wood Dale has made a total of six connections of single family residences to the sanitary sewer Wood Dale constructed in the Addison FPA. Comp. at 2. The complaint asks the Board to:

- A. Order Wood Dale to cease and desist from providing wastewater collection and treatment services to properties located within the Addison FPA;
- B. Assess civil penalties against Wood Dale pursuant to 415 ILCS 5/42 if appropriate; and
- C. Order such other and further relief as the Board may deem just and appropriate.

Comp. at 3.

Wood Dale argues that the complaint should be dismissed as the complaint is both duplicitous and frivolous. Wood Dale asserts that Addison raises the identical issues litigated

in the case of People ex rel. Ryan v. City of Wood Dale, No. 97CH 922 (Cir. Ct. DuPage Co.) and Wood Dale provided a copy of that complaint as Exhibit A to its motion. Wood Dale maintains that two years after the case was filed, Addison filed a motion to intervene. Addison's motion to intervene was denied. Mot. at 2; Exh. D. Based on these facts, Wood Dale argues that the complaint is duplicitous.

Wood Dale also argues that the complaint is frivolous because Addison seeks civil penalties from Wood Dale. Mot. at 2. Wood Dale notes that Addison objects to the "fine" negotiated in the settlement of the circuit court case and Addison appears to be seeking payment of civil damages to Addison. Mot. at 2.

Addison maintains that the complaint is neither duplicitous or frivolous. Addison states that it is not a party to the circuit court litigation and that the State and Wood Dale have negotiated a consent decree with regard to the circuit court action. Res. at 2. Addison asserts that the consent decree "does not enjoin Wood Dale from violating Addison's FPA." Res. at 2. That proposed consent decree has not been submitted to the Board. Addison argues that since it is asking the Board to order Wood Dale to cease and desist from its "illegal activities," the complaint is not duplicative of the circuit court action. Addison also points out that it is asking the Board to impose civil penalties against Wood Dale and not asking the Board to award civil damages to Addison. Thus, Addison argues that the complaint is not frivolous.

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. Brandle v. Ropp (June 13, 1985), PCB 85-68. An action before the Board is frivolous if it fails to state a cause of action upon which relief can be granted by the Board. Citizens for a Better Environment v. Reynolds Metals Co. (May 17, 1973), PCB 73-173.

The Board finds that this matter is clearly duplicitous. Addison's complaint is seeking relief for Wood Dale's alleged unpermitted construction of sanitary sewer lines and the subsequent hook-up of six residences in the wrong FPA. A review of the complaint filed in the circuit court establishes that the same violation is being litigated in circuit court. The Board notes that Addison's claim that it is seeking relief which may not be granted in circuit court is unsubstantiated because the proposed consent decree is not before this Board. The complaint filed in circuit court does seek to enjoin Wood Dale from further hook-ups. Mot. Exh. A at 10. Thus, the alleged violations and relief are identical between the two complaints and the complaint filed by Addison is duplicitous. Therefore, the Board dismisses the complaint and this docket is closed.

IT IS SO ORDERED.

Board Member K.M. Hennessey abstains.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 145 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 5th day of March 1998, by a vote of 5-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board