

ILLINOIS POLLUTION CONTROL BOARD  
May 5, 1994

JAY AGUILAR, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 94-75  
 ) (Enforcement)  
 )  
 THE CITY OF WOOD DALE, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by E. Dunham):

This matter comes before the Board on a "Motion for Continuance" filed on April 14, 1994, by Jay Aguilar. Also before the Board is a "Motion to Dismiss and Motion to Quash Subpoena Duces Tecum" filed on April 27, 1994, by the City of Wood Dale (Wood Dale).

The complaint in this matter was filed on February 25, 1994. On March 17, 1994, the Board denied respondent's motion to dismiss the complaint for failure to allege specific facts and allowed the complainant until April 18, 1994, to file an amended complaint providing additional information concerning the alleged violations. Mr. Aguilar's "Motion for Continuance" requests an additional 45 days in which to file an amended complaint.

Wood Dale seeks dismissal of this matter with prejudice on the grounds that the complainant has failed to file the amended complaint as ordered by the Board. The respondent further states that the motion for continuance does not provide sufficient grounds for granting an extension as the motion contains only general and conclusory allegations.

Complainant has also served the City of Wood Dale with a subpoena duces tecum requesting production of all "records relating to the discharges to the Wood Dale storm sewer system and all records relating to the Third Avenue sewer extension." Wood Dale requests the Board to quash the subpoena because there is no case currently pending before the Board. Wood Dale also contends that the subpoena fails to meet the requirements of a valid subpoena. Wood Dale argues that there is no complaint pending before the Board and therefore, it cannot be determined if the requested material is relevant. Further, Wood Dale contends that the subpoena is overbroad in scope and oppressive requiring the production of a massive volume of documents. Wood Dale also notes that the subpoena fails to state a date, time or location for the production of documents.

The Board grants Wood Dale's motion to quash the subpoena. The Board notes that the complaint as filed has not been accepted by the Board. While the Board recognizes that additional

information may be needed to provide specifics to amend the complaint, the use of discovery procedures where the complaint has not been accepted by the Board is inappropriate. The Board also finds that the subpoena is overbroad as it does not limit the timeframe of the requested records and the records to be produced are insufficiently specified. In addition, the Board believes that the information requested should be available to complainant through other means, especially through the Freedom of Information Act.

Mr. Aguilar has sought an extension of time in which to file an amended complaint. In the motion requesting an extension of time, Mr. Aguilar states that "the nature of the complaint is so complex" that he is unable to proceed at this time. He also states that he has issued subpoenas to "the parties" for the production of documents. Attached to the motion are subpoenas to the Clerk of the City of Wood Dale and the Wood Dale Fire Protection District.<sup>1</sup>

The Board denies Mr. Aguilar's request for an extension of time. From the motion, it appears that Mr. Aguilar is requesting additional time based on the issuance of the subpoenas. It appears that he is relying on obtaining additional information from the documents obtained through the subpoenas to amend the complaint. As the Board has quashed the subpoenas, the Board finds no reason to extend the time allowed for the filing of an amended complaint.

The Board finds that dismissal of this matter without prejudice is appropriate because Mr. Aguilar did not file the amended complaint by the date ordered by the Board or present adequate grounds for an extension of the filing date. The Board finds that this matter does not present an adequate justification for dismissal with prejudice. The Board notes that it is dismissing this matter without prejudice and therefore, Mr. Aguilar is not prohibited from filing a new complaint in this matter. The Board cannot at this point determine if the additional time requested is adequate to obtain the needed information to amend the complaint or if Mr. Aguilar still intends to pursue this matter. The Board finds it preferable to dismiss this matter at this time and allow Mr. Aguilar the option of filing a new complaint if the needed information can be obtained, than to hold this matter open, placing time requirements on the filing of an amended complaint.

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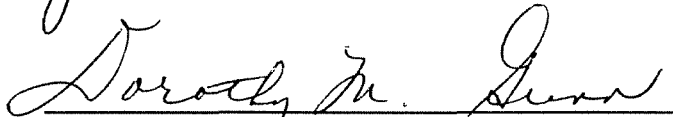
<sup>1</sup> The two subpoenas are identical in form and substance. Although there is no motion before the Board concerning the subpoena for the Wood Dale Fire Protection District, the Board also quashes that subpoena for the reasons stated above.

Accordingly, this matter is dismissed without prejudice and the docket in this matter is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, (415 ILCS 5/41 (1992)), provides for appeal of final orders of the Board within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 5<sup>th</sup> day of May, 1994, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board