

ILLINOIS POLLUTION CONTROL BOARD
October 1, 1987

BILL ADEN, JOHN SCHRODER,)
VELMA SCHRODER, JOE KENDALL,)
LAMORN MORRIS, et al.,)
)
Complainants,)
)
v.) PCB 86-193
)
CITY OF FREEPORT,)
)
Respondent.)

ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board on a motion filed by the City of Freeport (Freeport) on September 14, 1987. On September 23, 1987, Complainants other than Bill Aden and Joe Kendall (Responding Complainants), filed a Response to Freeport's motion.

Freeport filed its motion in response to the Board's Order of September 14, 1987 which granted an earlier motion by Complainants to include a letter (Mulcahey letter), written by Representative Richard T. Mulcahey, in the record of this proceeding. In that Order, the Board also directed the Hearing Officer to schedule another hearing in this matter in order to afford Freeport "rights of cross-examination concerning the contents of the [Mulcahey] letter". Freeport now asserts in its motion that it "waives its right to cross-examine Representative Mulcahey with regard to his [Mulcahey] letter or the subject matter thereof". As a consequence, Freeport requests that the Board not schedule any further hearings in this matter and that the Board decide the case based upon the record of the original hearing and the Mulcahey letter.

In its Response, the Responding Complainants, argue that the Board should reject Freeport's motion to waive the second hearing and that the Board, by Order, should delineate particular issues to be addressed at the second hearing. The Responding Complainants wish to present evidence at a second hearing concerning the following issues: an alleged sanitary sewer overflow event on August 26, 1987; the availability of Build Illinois funds for sewer improvements; Freeport's efforts to fund sewer improvements; and the time frame for implementing any improvements.

A hearing was held in this matter on June 23, 1987. According to the Complainants, 20 witnesses testified on the Complainant's behalf. (Complainant's Brief, p. 3). Freeport and the Complainants filed their post-hearing briefs of August 17 and 18, respectively. In its Order of September 4, the Board

directed that a second hearing be held for the sole purpose of affording Freeport an opportunity for cross-examination of the contents of the Mulcahey letter. Now, Freeport declines to utilize this opportunity. As a result, the purpose for this second hearing no longer exists.

It was never the intent of the Board to schedule a second hearing to allow the further development of other issues. The Responding Complainants had the opportunity to present evidence at the June 23 hearing. Although now currently represented by counsel, the Responding Complainants participated pro se as Complainants at hearing. The Board is not aware of any circumstances that denied the Complainants an opportunity to fully present their case on June 23. In short, the Complainants, which include the Responding Complainants, have had their "day in court". Freeport's motion is granted and the Responding Complainants' motion is denied.

The Board hereby directs the Hearing Officer not to schedule a second hearing in this matter. The Board considers the record now closed.

The Board wishes to address another issue presented by the recent filings. In its Motion, Freeport claims that the Board's September 4 Order

by implication finds that Representative Mulcahey's statements [contained in the Mulcahey letter] regarding the condition of the sanitary sewer are not to be considered by it [the Board] since Representative Mulcahey could have given that evidence, if admissible, at the original hearing.

The Responding Complainants object to this characterization. The Board concurs with the Responding Complainants' position. In its September 4 Order, the Board neither expressly nor implicitly found that it could not consider certain portions of the Mulcahey letter. Having admitted the letter into the record, the Board will consider it in total while properly weighing its import.

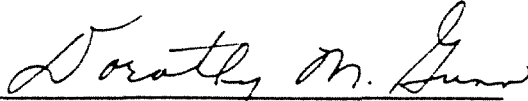
Recent filings indicate that Sidney Margolis and James Gitz, of Rudnick & Wolfe, are counsel for all Complainants other than Bill Aden and Joe Kendall. Although they are not represented by an attorney, Bill Aden and Joe Kendall are still complainants to this proceeding.

IT IS SO ORDERED.

B. Forcade dissented.

M. Nardulli abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 1st day of October, 1987, by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board