

ILLINOIS POLLUTION CONTROL BOARD
August 5, 1993

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 93-87
) (Enforcement)
)
 SOUTH HOLLAND METAL FINISHING CO.,)
 an Illinois Corporation,)
)
 Respondent.)

ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board on a "Supplemental Motion to Dismiss" filed by South Holland Metal Finishing Co. (South Holland) on July 21, 1993. The complainant filed a response to the motion on July 26, 1993.

South Holland contends that Section 39.5 of the Environmental Protection Act (Act) (415 ILCS 5/39.2 (1992)) should be viewed as superseding and replacing prior permit requirements and procedures with regard to air pollution. South Holland further argues that its operations are exempted from the requirements of the Clean Air Act permit program and should not be subject to any other requirements with respect to air pollution. South Holland also seeks leave to file the motion to dismiss beyond the 14 day requirement of 35 Ill. Adm. Code 103.140(a) because the provisions of the Act cited are fairly recent in nature and the motion presents a substantial issue.

Complainant argues that South Holland's motion is untimely and without merit, and should be denied. Further complainant notes that South Holland's "Motion to Dismiss" filed on June 16, 1993 was denied and found to be untimely. Complainant notes that the issues raised in the supplemental motion could have been raised in the prior motion, as the provisions have been in place since at least September of 1992.

Even if the motion were considered timely, the complainant argues that the motion should be denied because South Holland does not present any logical or valid argument warranting dismissal. Complainant notes that various provisions of the Act incorporate federal provisions to meet the requirements of the federal Clean Air Act and to strengthen existing state provisions. Further, complainant argues that Section 39.5 is of no consequence in this matter because the alleged violations (up to January of 1991) predate the adoption and implementation of the section.

The Board denies South Holland's request to file a supplemental motion to dismiss. The Board finds that the cited

provisions of the Act were not so recently adopted as to prohibit respondent from raising this argument earlier in the proceeding. These provisions were in effect for at least several months prior to the filing of the complaint and South Holland could have presented this issue at an earlier time.

Further, even if the motion were timely filed, the arguments presented by South Holland do not support dismissal of this matter. Section 39.5 does not supersede or replace other permit requirements. In addition, at the time of the violation alleged in the complaint Section 39.5 was not in effect.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 5th day of August, 1993, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board