

ILLINOIS POLLUTION CONTROL BOARD  
July 7, 1995

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 95-158  
 ) (Enforcement - Land)  
 CITY OF HERRIN, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by R.C. Flemal):

This matter is before the Board upon the following several filings. On June 21, 1995 the City of Herrin (Herrin) filed a Motion for Leave to File Pleadings, accompanied by a Motion Attacking Jurisdiction and a Motion Attacking the Pleadings. The Motion Attacking Jurisdiction was correctly filed and included an appropriate certificate of service. However the Motion Attacking the Pleadings was not signed and did not include a proper certificate of service. An Amended Certificate of Service was filed on June 22, 1995 which demonstrated appropriate service of process for both motions. A signed Motion Attacking the Pleadings was filed on June 23, 1995.

On June 27, 1995 the People of the State of Illinois (State) filed an Amended Notice of Filing and Complainant's Response to Motion Attacking Jurisdiction, accompanied with a Certificate of Service, and a Notice of Filing and Objection to Motion for Leave to File Pleadings.

The instant order deals with a four count complaint filed on May 30, 1995 by the State against Herrin. The Board hereby grants Herrin's Motion for Leave to File Pleadings.

In the Motion Attacking the Pleadings, Herrin claims the State failed to comply with the requirements of Section 31(a) of the Environmental Protection Act (Act). (415 ILCS 5/31(a).) Herrin argues that the complaint fails to sufficiently locate the site of the alleged refuse, allege facts to support the violations were committed "knowingly and repeatedly", and vaguely characterizes the dates of the violations by stating those dates are "better known only to the city". Herrin requests that the complaint be stricken on grounds that it is indefinite and ambiguous.

The State asserts that Herrin's motion attacking the pleadings was at least 8 days late with no sufficient explanation. In addition, the State claims the complaint satisfies the requirements of proper pleading and points to the specific paragraphs in its complaint which support the alleged

violations.

The Board finds the complaint is sufficiently definite to put Herrin on notice of the alleged violations and to prepare a defense. The Board hereby denies Herrin's Motion Attacking the Pleadings.

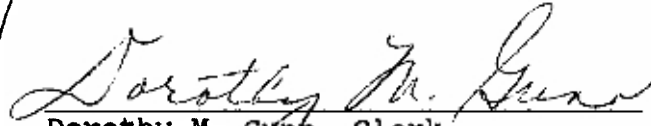
Next, Herrin's Motion Attacking Jurisdiction states that the Board lacks jurisdiction to entertain the State's complaint because the complainant fails to comply with the financing notification requirement of Section 31(a) of the Act. (415 ILCS 5/31(a).) Section 31(a) states in pertinent part that the "complaint shall be accompanied by a notification to the defendant that financing may be available, through the Illinois Environmental Facilities Financing Act, to correct such violation". (415 ILCS 5/31(a)(1).) The State did not include such financing notification in the original complaint. The State asserts that the absence of such notification has resulted in no harm to Herrin because Herrin's motion reflects its knowledge of the financing. The State's June 27th Amended Notice of Filing includes the financing notification.

Specific notice as delineated in Section 31(d) is required in conjunction with serving the complaint on Herrin. The State failed to send notice in compliance with Section 31(d) of the Act to the City of Herrin in its May 30, 1995 complaint.

The Board nonetheless accepts the State's June 27, 1995 amended notice of filing and interprets it as an amended complaint curing the financing notification deficiency. The Board therefore denies Herrin's Motion Attacking Jurisdiction.<sup>1</sup>

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 7<sup>th</sup> day of July, 1995, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

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<sup>1</sup> On July 6, 1995 Herrin filed an additional Motion Attacking Jurisdiction and a Motion Attacking the Pleadings. These pleadings are not ripe and are therefore not addressed in this order.