

ILLINOIS POLLUTION CONTROL BOARD
January 4, 1996

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 96-107
) (Enforcement-Air, Water
) and Land)
 ESG WATTS, INC., AN IOWA)
 CORPORATION,)
)
 Respondent.)

ORDER OF THE BOARD (by E. Dunham):

This matter comes before the Board on a "Motion to Dismiss and to Make More Definite and Certain" filed on December 1, 1995 by ESG Watts, Inc. (ESG Watts). The complainant filed its response to the motion on December 11, 1995.

ESG Watts moves to dismiss Counts II, III, IV, V, VI, VII and VIII or, in the alternative, to make the complaint more definite and certain. ESG Watts seeks dismissal of Counts III, IV, V, VI, VII and VIII because the allegations in these counts violate the doctrine of laches. ESG Watts claims that Counts III and VIII should be dismissed because the complaint was not filed within the statute of limitations. ESG Watts claims that counts II through VIII do not contain specific information and therefore, should be dismissed or be made more specific.

The complainant objects to the motion to dismiss and requests that it be denied. The complainant maintains that the doctrine of laches is not applicable to matters before the Board. Complainant also maintains that there is no statute of limitations in this matter. Complainant asserts that the complaint is sufficiently specific as to inform ESG Watts of the alleged violations.

Doctrine of Laches

With regard to the doctrine of laches, respondent has not proven any tardiness on the part of complainant has been prejudicial to respondent. While this could potentially be proven at hearing, the Board finds insufficient grounds for dismissal.

Count IV of the complaint alleges that an ongoing violation of respondent's NPDES permit began in 1986 and continues to the present. The complaint itself states that respondent has been previously adjudicated to be in violation of the NPDES permit. Any claims of violation previously adjudicated are barred by Res Judicata, any violation not adjudicated may be argued to the

Board at hearing. Respondent may prove the inequity required for laches to apply at hearing as well.

Statute of Limitations

Respondent mischaracterizes the harm alleged in Count III and VIII as an adverse effect on private property only, subject to the statutes of limitation. Count III alleges adverse impacts on the "waters of the State". With regard to both counts, complainant is acting on behalf of the People, not on behalf of a private party or seeking to remedy a private injury.

Specific Contents of Complaint

The content requirements of a complaint are set forth at 35 Ill. Adm. Code 103.122(c). Specifically, 35 Ill. Adm. Code 103.122(c)(2) provides that a complaint shall contain:

the dates, location, events, extent, duration, and strength of discharges or emissions, and consequences alleged to constitute violations of the Act and regulations. The complaint shall advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense. (emphasis added.)

The underlined portion of Section 103.122(c)(2) is the key sentence in judging the adequacy of a complaint.

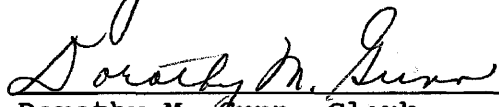
Count II through VIII of the complaint contain sufficient information regarding the date, place, activities and references to the Act and regulations to allow respondent to understand reasonably what is alleged and to prepare a defense. Specific facts can be, and should be, entered into the record at hearing or in briefs as appropriate.

ORDER

The Board hereby denies ESG Watts' Motion to Dismiss and make more Definite and Certain.

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 4th day of January, 1996, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board