

ILLINOIS POLLUTION CONTROL BOARD
August 3, 1995

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 95-91
) (Enforcement-land)
 BELL SPORTS, INC. A CALIFORNIA)
 CORPORATION, AND WASTE HAULING)
 LANDFILL, INC., AN ILLINOIS)
 CORPORATION, AND WASTE HAULING,)
 INC., AN ILLINOIS CORPORATION,)
)
 Respondents.)

ORDER OF THE BOARD (by C.A. Manning):

This matter is before the Board on a motion to dismiss an enforcement complaint filed on June 14, 1995 by Waste Hauling Landfill, Inc. (WHLI) and Waste Hauling, Inc. (WHI). The underlying complaint was filed March 14, 1995 by the People of the State of Illinois by James E. Ryan, Attorney General, against Bell Sports (Bell), WHLI and WHI, and alleges violations of the RCRA provisions of the Illinois Environmental Protection Act (Act) and the corresponding Illinois regulations regarding proper treatment of hazardous waste including storage, disposal, marking, inspection, manifesting, transportation and proper closure of a RCRA facility. (See 415 ILCS 5/21(f), (d), (g), 21.1(a) and 35 Ill. Adm. Code Parts 703, 722, 723, 724, 807.) On June 23, 1995, the People filed a response to the motion to dismiss and on July 3, 1995, WHLI and WHI filed a reply accompanied by a motion for leave to file instanter. Bell has neither filed a motion to dismiss, or an answer to the complaint pursuant to unopposed motions for extension of time in which to answer, which were granted by the Board. (See Board orders of April 20, 1995, May 18, 1995 and June 22, 1995.)

The motion to dismiss filed by WHLI and WHI argues that the complaint before the Board arises out of the same "occurrence or transaction" as another matter pending before the circuit court in Macon County, Illinois since 1992 and it is therefore duplicative under Section 2-619(a)(3) of the Illinois Code of Civil Procedure and should be dismissed. The motion to dismiss attaches a copy of the circuit court complaint which only names WHLI as a defendant and alleges violations of various provisions of the Act and the regulations concerning WHLI's operation of its sanitary landfill, i.e. failing to provide adequate cover, control leachate and refuse, causing water pollution, improperly accepting special waste, and improperly disposal in unpermitted portions of the landfill, failed to submit an adequate closure plan and maintain prior conduct certification. (See 415 ILCS 5/12(a), 21(d), (p) and 35 Ill. Adm. Code Parts 745, 807, 809.)

WHLI and WHI argue that during the pendency of the litigation before the circuit court, a search warrant was obtained and paint waste was seized from the WHLI landfill and the Bell facility, and it is this paint waste which is allegedly hazardous and which is the basis of the complaint before the Board. WHLI and WHI argue that since the Attorney General has elected to proceed in the circuit court, the Board should decline jurisdiction and allow the case to be resolved in one forum, which could include the Attorney General amending the complaint before the circuit court.

In response, the Attorney General argues that under either the Board's frivolous and duplicitous procedural rule provision, Section 103.124 (35 Ill. Adm. Code 103.124) or the Illinois Code of Civil Procedure, Section 2-619(a)(3), this matter is not duplicative of the litigation in circuit court, and the complaint is properly before the Board. The Attorney General argues that the actions are different because this case involves RCRA violations while the case before the circuit court involves sanitary landfill violations. Also, the Attorney General argues that the primary objective of the state's case before the circuit court was to obtain injunctive relief enjoining WHLI from continuing to operate the sanitary waste landfill which the court did award in June of 1992, and which the Board cannot grant. The Attorney General asks that we deny the motion to dismiss on the basis that due to the technical expertise of the Board, we are the appropriate forum to determine the adequacy of a RCRA closure plan.

We agree with the Attorney General that this case is not substantially similar to the matter pending in circuit court so as to grant the motion to dismiss and we believe that it is appropriate that this case proceed to hearing before the Board. The complaint before the circuit court involves only one of the parties, WHLI, while this case involves the two additional parties, Bell and WHI. The case before the circuit court involves the operations of only the sanitary landfill, while the case before the Board involves whether hazardous waste was properly handled from its point of generation until it was allegedly unlawfully disposed. Importantly the complaint before the circuit court has not been amended to include any of the violations at issue before the Board.

We also observe that the Board, as a statutorily-authorized forum to hear violations of the Environmental Protection Act and Illinois' regulations, is comprised of technically qualified members designated to hold hearings on violations of the Act, determine issues of fact regarding the alleged violations and to consider any other ancillary issues to the complaint such as permitting and proper closure of a facility. (415 ILCS 5/5(a) and (d).) (See e.g. *Employers Mutual Companies v. Skilling* (1994) 163 Ill.2d 284, 644 N.E.2d 1163, 206 Ill.Dec. 110, 113,

where the Illinois Supreme Court held, citing *Kellerman v. MCI Telecommunications Corp.* (1986), 112 Ill.2d 428, 493 N.E.2d 1045, 98 Ill. Dec. 24, 25, that matters should be referred to an administrative agency when it has a specialized or technical expertise that would help resolve the controversy, or when there is a need for uniform administrative standards.)

We hereby deny the motions to dismiss and direct that Bell, WHLI and WHI, answer the complaint within 30 days of service of this order. As a hearing officer has been assigned to this case, this matter shall proceed to hearing.

Board Member J. Theodore Meyer dissented.

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 3rd day of August, 1995, by a vote of 4-1.

Dorothy M. Gunn, Clerk
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Illinois Pollution Control Board