

ILLINOIS POLLUTION CONTROL BOARD  
February 16, 1995

PEOPLE OF THE STATE )  
OF ILLINOIS, )  
 )  
Complainant, )  
 )  
v. ) PCB 94-271  
 ) (Enforcement)  
NATIONAL INTERCHEM CORPORATION, )  
 )  
Respondent. )

ORDER OF THE BOARD (by G. T. Girard):

This matter is before the Board on a motion to dismiss filed by the respondent, National Interchem Corporation, on November 10, 1994. On December 22, 1994, the complainant filed a timely response to the motion. On December 29, 1994, the respondent filed a motion for leave to file a reply and a reply. Pursuant to the Board's rules at 35 Ill. Adm. Code 101.241, the Board finds that a reply is necessary to prevent material prejudice and will allow the reply.

Respondent argues that the complaint should be dismissed as the complaint fails to state a cause of action. Respondent alleges that the plain language of the statute "does not create or establish a deadline by which TRI Report must be filed". (Mot. at 2.) Respondent argues that the complainant is asking the Board to read into the statute a nonexistent submission deadline, which would make the statute "impermissibly vague and possibly preempted". (Mot. at 3.)

Complainant maintains that the Emergency Planning and Community Right-to-Know Act (EPCRA) explicitly states that it is not intended to preempt any state or local law and that other jurisdictions have interpreted the provisions of EPCRA such that state law is not preempted. (Res. at 3-4.) Complainant distinguishes the EPCRA law from the laws at issue in the cases cited by respondent and asserts that in this case federal law does not preempt the state law. (Res. at 5.) Complainant also argues that the statute incorporates by reference the provisions of EPCRA which require the filing of the TRI Report by a set date. (Res. at 5.) Therefore, the complainant asserts the Act is not unconstitutionally vague. (Res. at 8.)

Respondent next argues that the complainant's action is premature and that the alleged violation does not exist under current law. In support of this position, respondent cites to Public Act 88-146 which became effective January 1, 1994, amending Section 25b-2 of the Act. Complainant argues that the provisions of Public Act 88-146 do not apply as the alleged violations occurred in 1992, two years prior to the enactment of

Public Act 88-146. Respondent in its reply maintains that the provisions of Public Act 88-146 do apply because the provision imposes procedural requirements which must be complied with before filing a cause of action. (Reply at 3.)

The Board finds that the provisions of Public Act 88-146 amending Section Title VI-B: Toxic Chemical Reporting by adding Section 25b-6 apply to this case. Section 25b-6 of the Act provides in pertinent part:

Prior to taking action...for a violation of Section 25b-2 of this Act, the Agency shall issue...by certified mail or personal service upon the person complained against, a notice that the Agency has failed to receive from that person all required toxic chemical release forms...

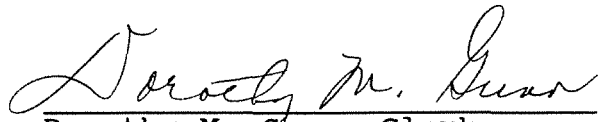
(415 ILCS 5/25b-6)

This amendment became effective on January 1, 1994 and this case was filed on September 27, 1994. Specifically, the amendatory language quoted above includes a procedural requirement that notice be served on the person complained against indicating that the Agency has failed to receive all toxic chemical release forms. This is clearly a prerequisite to filing an enforcement action which the Agency did not follow in this case. Therefore, the Board grants the motion to dismiss and the docket is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/40.1) provides for the appeal of final Board orders within 35 days of service of this decision. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also, 35 Ill. Adm. Code 101.246, Motions for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 16<sup>th</sup> day of February, 1995, by a vote of 7-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board