

ILLINOIS POLLUTION CONTROL BOARD
December 1, 1994

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 94-260
) (Enforcement)
 COMPONENTS CORPORATION OF AMERICA,)
 a New York corporation,)
)
 Respondent.)

ORDER OF THE BOARD (by E. Dunham):

This matter comes before the Board on a "Motion to Strike Affirmative Defenses" filed on November 14, 1994 by complainant. Components Corporation of America filed a response to the motion on November 21, 1994.

Complainant claims that respondent failed to comply with the rules of pleadings as set out in the Illinois Code of Civil Procedure (735 ILCS 5/2 613(d) (1992)) when filing its affirmative defenses. Complainant contends that the affirmative defenses are not supported by fact and are merely legal conclusions. Complainant claims that the affirmative defenses should be stricken due to the failure to comply with procedural rules.

In its response, respondent maintains that the affirmative defenses satisfy the requirements set forth in the Illinois Code of Civil Procedure. Respondent also references Fitzpatrick v. City of Chicago (1986), 112 Ill. 2d 211, 217, which provides that "[n]o pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he or she is call upon to meet."

Section 101.100 of the Board's procedural rules specifically states that the Code of Civil Procedure shall not expressly apply to proceedings before the Board; however, parties may argue the applicability absent a provision in the Board's procedural rules. 35 Ill. Adm. Code 101.100. Neither party has presented any arguments to the Board on the applicability of the requirements of the Code of Civil Procedure to the filing of affirmative defenses.

Section 103.122(d) allows the filing of an affirmative defense with the answer or supplemental answer prior to hearing:

Respondent may file an answer within 30 days of receipt of the complaint. All material allegations of the complaint shall be taken as denied if not specifically

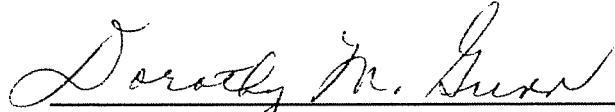
admitted by answer, or if no answer is filed. Any facts constituting an affirmative defense which would be likely to take the complainant by surprise must be plainly set forth prior to hearing in the answer or supplemental answer filed pursuant to section 103.210(b).

The Board denies the complainant's motion to strike the affirmative defenses. The affirmative defenses asserted by respondent in its answer assert facts "constituting an affirmative defense which would be likely to take complainant by surprise". The Board finds that the affirmative defenses are properly filed in this matter and should not be stricken.

IT IS SO ORDERED.

Board Member J. Yi abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 1st day of December, 1994, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board