

ILLINOIS POLLUTION CONTROL BOARD  
April 21, 1994

PEOPLE OF THE STATE )  
OF ILLINOIS, )  
 )  
Complainant, )  
 )  
v. ) PCB 94-84  
 ) (Enforcement)  
WINNEBAGO RECLAMATION )  
SERVICE, INC., an Illinois )  
corporation, and )  
WM. LANS SON'S CO., INC., )  
an Illinois corporation, )  
 )  
Respondents. )

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on two motions. First, respondent Wm. Lans Son's Co., Inc. (Lans) asks that attorneys Donald P. Gallo and Cynthia E. Smith, who are not licensed to practice in Illinois, be permitted to appear in this matter. That motion is granted.

Second, on April 4, 1994, Lans filed a motion to dismiss. Complainant the People of the State of Illinois filed its response to the motion to dismiss on April 15, 1994.

Lans seeks to dismiss the claims brought against it in the People's complaint, filed on March 11, 1984. Lans contends that the sections of the Environmental Protection Act (Act) (415 ILCS 5/1 et seq. (1992)) and Board regulations cited by the People in their complaint against Lans were not in effect during the period (1978 to November 1991) in which Lans is alleged to have been in violation of those provisions.<sup>1</sup> Lans argues that because those provisions were not in effect, it could not have been in violation of them. Lans also contends that shredded auto fluff is not a "special waste" or an "industrial process waste". Thus, Lans asks that the Board dismiss the complaint as to it.

In response, the People do not dispute the accuracy of the effective dates given by Lans in its motion to dismiss. However, the People contend that the facts alleged in the complaint establish violations of statutory and regulatory provisions which were in effect between March 15, 1979 and November 1991, and that

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<sup>1</sup> The complaint alleges that Lans violated Sections 22.01 and 21(e) of the Act, and 35 Ill. Adm. Code 808.121, 808.122, 809.301, and 809.302, between 1978 and November 1991.

those provisions are predecessors of the sections alleged in the complaint. The People argue that the complaint should not be dismissed, and ask that the Board give leave to amend counts VII and VIII of the complaint to amend the statutory and regulatory violations alleged, and the corresponding dates.

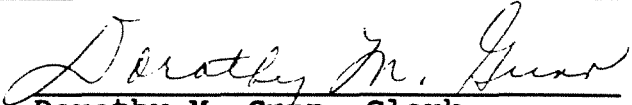
Initially, we find that Lans' motion to dismiss is untimely. Section 103.140(a) of the Board's procedural rules require that all motions to dismiss the complaint be filed within 14 days after receipt of the complaint. (35 Ill. Adm. Code 103.140(a).) The certificate of service states that the complaint was mailed on March 11, 1994. There is a rebuttable presumption that service by first class mail is complete four days after mailing. (35 Ill. Adm. Code 101.144(c).) Thus, service of the complaint is presumed complete by March 15, 1994, and any motion to dismiss was due by March 29, 1994. The motion to dismiss was filed on April 4, 1994, and is therefore untimely.

Even if the motion to dismiss were timely, we would deny the motion. The facts alleged in the complaint may establish violations of predecessors of the sections cited in the complaint. As to Lans' contention that shredded auto fluff is neither a special waste nor an industrial process waste, that is an issue to be argued at hearing.

The People are hereby given leave to amend the complaint. The amended complaint shall be filed no later than May 12, 1994.

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 21st day of April, 1994, by a vote of 6-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board