

ILLINOIS POLLUTION CONTROL BOARD
May 18, 2000

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 00-67
) (Enforcement - RCRA)
AMERICAN DISPOSAL COMPANY)
AND CONSOLIDATED RAIL)
CORPORATION,)
)
Respondents.)

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

Respondent Consolidated Rail Corporation (Conrail) filed a motion to dismiss on March 3, 2000, with leave of the hearing officer. Conrail asks the Board to dismiss a complaint filed on October 7, 1999, by the Attorney General on behalf of the People of the State of Illinois (complainant). The complaint, filed under Section 31 of the Environmental Protection Act (Act) (415 ILCS 5/31 (1998)), alleges that respondents American Disposal Company (ADI) and Conrail violated Section 21(a) of the Act (415 ILCS 5/21(a) (1998)) by causing or allowing the open dumping of waste.

Complainant filed a response to Conrail's motion to dismiss on April 6, 2000, with leave of the hearing officer. Complainant filed a corrected response on April 7, 2000, with a motion for leave to file *instanter*, which the Board grants. Conrail filed a reply to complainant's response on April 17, 2000. Although a movant has no automatic right to reply (see 35 Ill. Adm. Code 103.140(c)), and Conrail did not move the Board for leave to file the reply, the Board will consider the reply in the interest of judicial economy.

For the reasons set forth in this order, the Board denies Conrail's motion to dismiss.

BACKGROUND

ADI, an Illinois corporation, was involuntarily dissolved on February 2, 1998, for failure to file its annual report and pay its franchise taxes. Comp. at 2.¹ ADI is engaged in the business of hauling waste, and operates a site located at 3725 South Maplewood, Chicago,

¹ Cites to the complaint shall be referred to as "Comp. at ____." Cites to the motion to dismiss shall be referred to as "Mot. at ____." Cites to the corrected response to the motion to dismiss shall be referred to as "Resp. at ____."

Illinois (site). *Id.* Conrail is a Pennsylvania corporation licensed to do business in Illinois, and is in good standing. *Id.* Conrail owns a portion of the site. Comp. at 3.

The complaint alleges that ADI and Conrail have violated Section 21(a) of the Act (415 ILCS 5/21(a) (1998)) prohibiting persons from causing or allowing the open dumping of waste. Comp. at 3-5. The complaint also alleges that from November 2, 1994, and continuing to May 8, 1995, or a date better known to respondents, ADI and Conrail engaged in or allowed open dumping by consolidating six drums of unknown waste at the site which is not a sanitary landfill. Comp. at 2-3; Resp. at 1-2. Neither Conrail nor ADI filed an answer to the complaint.

ARGUMENT AND ANALYSIS

Conrail argues that Section 21(a) of the Act (415 ILCS 5/21(a) (1998)) is subject to the 18-month statute of limitations for commencement of an action to prosecute a Class A misdemeanor under 720 ILCS 5/3-5(b) (1998). Mot. at 2. This section of the Criminal Code provides that, unless otherwise provided by statute, the prosecution of any misdemeanor must be commenced within 18 months after its commission. In support of this position, Conrail cites People v. Wolohan Lumber Co., 263 Ill. App. 3d 344, 637 N.E.2d 1064 (3d Dist. 1994). Mot. at 2.

Alternatively, Conrail argues that the two-year limitation set forth in 735 ILCS 5/13-202 (1998) applies. Mot. at 2. This section governing civil personal injury actions provides that actions for damages for an injury to the person resulting from the commission of a Class X felony shall be commenced within two years after the cause of action arose. Under either of these provisions, Conrail asserts that the statute of limitations on this action would have expired in 1997. Mot. at 2.

Complainant asserts that Conrail's arguments are wholly inapplicable to this case. Resp. at 2. Wolohan Lumber Co. was an action brought pursuant to the criminal enforcement provisions of Section 44 of the Act (415 ILCS 5/44 (1998)). The present case is brought pursuant to the civil enforcement provisions of Section 31 of the Act (415 ILCS 5/31 (1998)). Resp. at 2. Therefore, complainant argues, the statute of limitations set forth in the Criminal Code do not apply. Resp. at 3.

Complainant further argues that there is no statute of limitation for civil enforcement actions brought pursuant to Section 31 of the Act. Resp. at 4. Complainant cites Pielet Brother Trading, Inc. v. Pollution Control Board, 110 Ill. App. 3d 752, 442 N.E.2d 1374 (5th Dist. 1982), in which the court upheld a Board determination that the statute of limitation does not apply when the Agency seeks to protect the public's right to a clean environment. *Id.*

The Board sees no reason to depart here from its ruling in Pielet and subsequent cases that statutes of limitation are not applicable where the State is asserting public rights pursuant to the civil enforcement provisions of Section 31 of the Act. See People v. Eagle-Picher-Boge, L.L.C. (July 22, 1999), PCB 99-152; People v. Inspiration Development Co. (March 19,

1998), PCB 97-207; People v. American Waste Processing Ltd. (March 19, 1998), PCB 98-37; and People v. Bentronics Corporation (October 17, 1996), PCB 97-20.

Here, the action was brought pursuant to Section 31 of the Act, seeking enforcement of the provision of the Act that prohibits the open dumping of waste. There is no applicable statute of limitations for civil enforcement actions brought pursuant to Section 31 of the Act. Moreover, the Board agrees with the complainant that the statute of limitations applicable in criminal proceedings is not applicable in this case where the complainant has not sought enforcement pursuant to Section 44 of the Act.

Conrail's reply asserts that complainant cannot bring an action under Section 31 of the Act because of the alleged failure to notify Conrail pursuant to Section 31(a)(1), which provides in part:

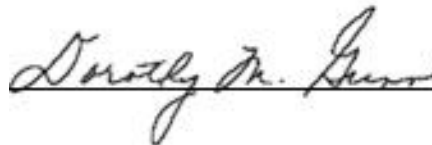
Within 180 days of becoming aware of an alleged violation of the Act or any rule adopted under the Act or of a permit granted by the Agency or condition of the permit, the Agency shall issue and serve, by certified mail, upon the person complained against a written notice informing that person that the Agency has evidence of the alleged violation. 415 ILCS 5/31(a)(1) (1998).²

Consistent with Board precedent, the Board finds that the Attorney General is not subject to Section 31(a) of the Act and has broad authority to bring an enforcement action on behalf of the People of the State of Illinois under Section 31(d) of the Act. See, e.g., People v. Chemetco, Inc. (July 8, 1998), PCB 96-76, slip op. at 2; People v. Geon Company, Inc. (October 2, 1997), PCB 97-62, slip op. at 9-10; People v. Heuermann (September 18, 1997), PCB 97-92, slip op. at 7.

For these reasons, the Board denies Conrail's motion to dismiss. The Board directs the hearing officer to proceed to hearing as soon as practicable.

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 18th day of May 2000 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

² This provision became effective on August 1, 1996. See Public Act 89-596.