

ILLINOIS POLLUTION CONTROL BOARD
May 23, 1991

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	PCB 90-89
)	(Enforcement)
FRED JOHNSON, JOHNSON & BRIGGS)	
TANK TRUCK SERVICE, a/k/a)	
JOHNSON & BRIGGS TANK TRUCK)	
& HEATER SERVICE, an Illinois)	
Corporation,)	
)	
Respondents.)	

DISSENTING OPINION (by B. Forcade):

I dissent from today's Order. Herman Loeb was dismissed from this action because the Agency failed to provide Section 31(d) notice. That action was not a dismissal with prejudice, the Board did not rule in any manner on the claimed violations. The Agency is free to file a new enforcement action against Mr. Loeb for the exact same claimed violations.

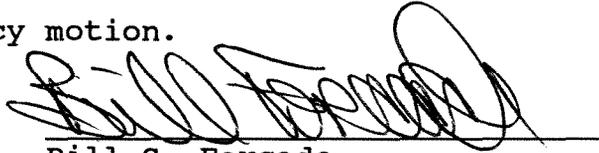
After the dismissal, the Agency did send Mr. Loeb the appropriate notice. The Agency has now satisfied all procedural prerequisites for notice and is fully entitled to file a new and separate enforcement action against Mr. Loeb. The Board would have no discretion to deny this new filing. If this new enforcement action is filed the Agency could move to consolidate the new action with this existing one to avoid duplication of effort by the parties and the Board. None of the regulatory requirements used to justify today's denial (35 Ill. Adm. Code 103.240 and 103.241(b)) would then apply.

Alternatively, the Agency could have attempted to add Mr. Loeb by filing an Amended Complaint identical to the original complaint filed in this proceeding. Again, neither of the regulatory bases for today's denial would then apply.

I also disagree with the language in the Order about Mr. Loeb's reasonable expectations. The Agency has repeatedly asserted that Mr. Loeb violated the environmental protection laws of the State of Illinois. Neither this Board nor any Court has ever ruled to the contrary. Any expectation by Mr. Loeb that he would not be subject to suit for the claimed violations would be unreasonable in my opinion. I simply can't see how it would, "not be fair" to reopen this matter, but would be fair to start a new matter which would cost everyone more money.

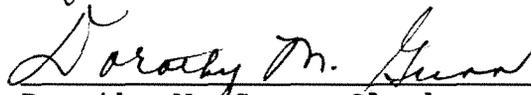
Mr. Loeb's attorney received a copy of the motion to reinstate and his attorney was made aware of the Section 31(d) letter. Mr. Loeb did not file any opposition to the motion to reinstate him in this action. In short, the majority's adherence to procedural niceties can end up having the Board rule upon multiple new legal filings and responses, thus running up attorney fees for the Attorney General's office as well as Mr. Loeb.

I would grant the Agency motion.



Bill S. Forcade
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 24th day of May, 1991.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board