## ILLINOIS POLLUTION CONTROL BOARD July 16, 1987

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, and the PEOPLE OF THE STATE OF ILLINOIS,	) ) )	
Complainants,	)	
V.	)	PCB 86-160
FITZ-MAR, INC., A Corporation,	)	
Respondent.	)	

ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon an May 26, 1987, Motion to Dismiss filed by the Respondent, Fitz-Mar, Inc. (Fitz-Mar). Fitz-Mar asserts that because of a concurrent action pending in the Circuit Court of Cook County involving the same issues and facts, it would be an unreasonable economic hardship and fundamentally unfair to require it to litigate both actions in both forums.

On June 10, 1987, the Illinois Environmental Protection Agency (Agency) opposed Fitz-Mar's motion by stating that these actions do not involve the same issues and facts and are substantially different. The Agency states that the Complaint before the Board contains nine counts and alleges that:

(a) Respondent has operated, from June 25, 1964, until July 10, 1985 landfill trenches 6, 7, 8 & 9 without an operating permit, (b) Respondent has operated from June 25, 1984, to at least July 10, 1985, landfill trenches 10 and 11 without having an operating permit, (c) Respondent has, from July 1, 1985, until the filing of complaint (September 30, 1986), failed to cover exposed faces of old refuse which was moved from trenches 6, 7, 8 & 9 to trenches 10 and 11, causing odor problems to residents residing nearby, (d) Respondent has failed to apply daily and intermediate cover to exposed refuse, (e) Respondent has caused or allowed litter to remain uncollected at the landfill, (f) Respondent has failed to

file a leachate management plan for the landfill, (g) Respondent has pumped leachate into standing water on the landfill site, (h) Respondent has discharged a contaminant into State waters by pumping leachate into standing water on the site, as alleged in "g" above, and (i) Respondent has failed to supervise and failed to compact as refuse was deposited in its landfill.

The Agency states that the Complaint before the Chancery Division of the Circuit Court of Cook County, Illinois (87-CH-1909) contains 2 counts and alleges that:

(a) Respondent has engaged in a pattern and practice of dumping in unpermitted areas, including on or before October 6, 1986, and continuing thereafter, and continuing unless the Chancery Court restrained Respondent, by dumping in areas 12, 13, 14 & 15, while not having an operating permit for those areas, and (b) Respondent has, on or about October 6, 1986, pumped contaminant discharge from area 16 into a creek located east of the site, landfill and that Respondent engaged in a pattern and practice, and would continue to do so unless restrained, pumping leachate and contaminants into within and without Illinois waters boundaries of the landfill site.

The Board agrees that these actions do not involve the same precise issues and facts. Further, the remedies sought differ. The Complaint in PCB 86-160 requests the Board to issue an order requiring Fitz-Mar to (1) cease and desist from further violation, and (2) impose a monetary penalty. The Complaint before the Circuit Court requests an Order (1) enjoining Fitz-Mar from further violations, (2) imposing monetary penalties, and (3) permitting the inspection of Fitz-Mar by the Agency. enforcement of the Act, the Board and the Circuit Court have different, but concurrent roles. A notable difference lies in the form of relief requested. The Act does not give the Board the power to grant injunctions. The Courts may. Each of the actions is brought in the forum most suited to granting the relief requested. The Board has jurisdiction of the enforcement action before it pursuant to Section 31 of the Act. It is no defense that litigation in another proceeding may cause economic hardship, and further, it is not fundamentally unfair. Mar's motion to dismiss is denied.

IT IS SO ORDERED.

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