

ILLINOIS POLLUTION CONTROL BOARD  
March 16, 1978

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 78-39  
 )  
 ORDMAN'S LEMONT PARK AND SHOP, INC., )  
 )  
 Respondent. )

ORDER OF THE BOARD (by Mr. Young):

This matter before the Board concerns a Complaint filed on February 7, 1978, by the People of the State of Illinois against Respondent for operating an emission source without a permit in violation of the Act and Rules. In response, Ordman's Lemont Park and Shop submitted an operating permit dated February 9, 1978, issued by the Agency for emission source in question and filed a Motion to Strike Complaint on February 14, 1978.

Under Section 31(b) of the Act, the Board is required to hold a hearing unless the Complaint is found to be "duplicitous" or "frivolous." This matter is not duplicitous; there is no indication of a duplicate action against Ordman's Lemont Park and Shop, Inc. On the other hand, if this Board were not able to grant the requested relief based on allegation(s) of this Complaint, we would dismiss this action as frivolous.

In this action, Complainant seeks a monetary penalty, an order to cease and desist permit violations, and response to the allegations in this Complaint against Respondent's emission source which has received a permit from the Agency.

The Board is mindful that a violation of the Act or Rules does not, in and of itself, warrant a monetary penalty. Southern Illinois Asphalt (1975) 60 Ill.2d 204, 326 N.E.2d 406. In fact, the Board is without authority to impose fines unless it serves to aid in the enforcement of the Act. Harris-Hub Company (1977) 365 N.E.2d 1071; May (1976) 35 Ill.App.3d 930, 342 N.E.2d 784; Metropolitan Sanitary District (1975) 62 Ill.2d 38, 338 N.E.2d 392.

In this case, the Board finds this allegation would not alone justify an imposition of a penalty; nor would this claim warrant a cease and desist order in the face of an operating permit granted by the Agency. In prior decisions, the Board has refused to schedule costly and time-consuming hearings when relief could not be granted even if all the allegations were proven. Farmers Opposed to Extension of the Illinois Tollway, PCB 71-159, 2 PCB 461 (September 16, 1971). Accordingly, the Board will not set a hearing for Respondent to answer to a technical violation which was cured on his own initiative.

The Board will grant Respondent's Motion to Strike. The Complaint is hereby dismissed.

IT IS SO ORDERED.

Mr. Goodman dissented.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 16<sup>th</sup> day of March, 1978 by a vote of 4-1.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board