

ILLINOIS POLLUTION CONTROL BOARD
April 17, 1973

ENVIRONMENTAL PROTECTION AGENCY)
)
) #72-17
v.)
)
ROY FRIETSCH)

ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.):

Respondent has moved to strike the Agency's amended complaint on the grounds that the amended complaint specifies additional dates of violation ranging from April 17, 1972 to March 30, 1973. An examination of the original complaint and the motion to amend the complaint discloses that the Agency is, by its motion, seeking to add additional dates for alleged violation of open dumping and housekeeping provisions contained in the Rules and Regulations Governing the Control of Refuse Disposal Sites and Facilities. While the motion to amend has been filed only 12 days prior to the date of the hearing, we do not believe the motion to amend should be denied or stricken.

The Agency is following the Rule set forth in Environmental Protection Agency v. Mystik Tape, a Division of Borden, Inc., #72-180, (January 16, 1973) requiring the specification of dates of alleged violations which have occurred subsequent to the filing of the petition. Since the offenses alleged are in the nature of continuing violations, we do not believe Respondent to be at a disadvantage in his capability of offering proof in refutation of the alleged charges. Rather than grant the motion to strike, we admonish the Hearing Officer that to the extent Respondent can demonstrate that the closeness of the filing of the amended complaint to the date of hearing would place Respondent at a disadvantage in making its defense to any violations alleged, the hearing should be continued to a future date that would enable Respondent to make an adequate defense.

IT IS SO ORDERED.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Order was adopted on the 17th day of April, 1973, by a vote of 3 to 0.

Christan D. Moffett