

ILLINOIS POLLUTION CONTROL BOARD
September 2, 1982

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 and)
)
 FLORENCE FARMER,)
)
 Intervenor,)
)
 v.) PCB 78-233
)
 GRANITE CITY STEEL)
 DIVISION OF NATIONAL STEEL CORPORATION,)
)
 Respondent.)

ORDER OF THE BOARD (by I. Goodman):

By Order of the Board this matter was reopened on March 19, 1982 pursuant to the appellate court's mandate in Florence Farmer v. Illinois Pollution Control Board, No. 80-377 (5th Dist, 1982). On June 3, 1982 Intervenor, Florence Farmer, filed an Amended Complaint which 1) named the Illinois Environmental Protection Agency (Agency) as a Respondent and 2) alleged additional and continuing violations by the original Respondent, Granite City Steel (Granite City).

The Agency moved to dismiss those counts in the Intervenor's Amended Complaint alleging violations by the Agency on June 9, 1982. On June 21, 1982 the Intervenor filed a Response to the Agency's motion and requested additional time to file a memorandum of law in support thereof. The Board granted the additional time on July 1, 1982. On July 14, 1982 the Intervenor filed her memorandum. Without leave, the Agency filed a Reply on July 22, 1982 and the Intervenor filed a Response thereto on August 30, 1982 and amended the complaint naming the Director of the Agency as Respondent, as opposed to the Agency itself.

The Agency's motion to dismiss was premised on the Supreme Court's holding in Landfill, Inc. v. Pollution Control Board, 74 Ill.2d 541, 387 N.E.2d 258 (1978), that the Agency was not a person that could be sued under the Environmental Protection Act for failure to properly exercise its duties. Throughout its responses, the Intervenor argued that the Landfill decision was distinguished in that it dealt with a permit denial, as opposed to an enforcement action. However, the Court's language is

explicit: "Prosecution under the Act, . . . is against polluters, not the Agency" at p. 264.

Despite the quasi-judicial duties delegated to the Board under the Act, this body cannot consider actions in contravention of the Landfill decision. Furthermore, the Board, as an administrative body, cannot decide issues for which the remedy is a writ of mandamus. This is reserved for the judiciary. Therefore, the Agency's motion to dismiss is granted and Counts VI, VII, VIII and IX of the Amended Complaint of August 30, 1982 are stricken.

As stated above, the Intervenor's Amended Complaint alleged violations by Granite City in addition to those already brought by the Agency's complaint in this matter. On June 14, 1982 Granite City moved for an extension of time to respond and filed a motion to strike or dismiss Intervenor's Amended Complaint and Memorandum in Support thereof on June 28, 1982. (The additional time was granted by the Board at its regularly scheduled meeting on July 1, 1982.)


On July 14, 1982 the Intervenor requested until July 28, 1982 to respond to Granite City's motion, which was granted on July 21, 1982. On August 30, 1982 the Intervenor filed the response with a motion to file Instanter. The motion is granted.

In the Amended Complaint filed by the Intervenor, three counts in addition to those alleged originally by the Agency are set out. The counts allege violations of Section 39 of the Act, Chapter 2: Air Pollution, Rules 102, 103(a), 103(b), 110, 203(d)(2), 203, 204 and 307, and Rule 331(a) of the Board's Procedural Rules. The Intervenor alleges violations of the Act and Chapter 2 from 1975 and 1972, respectively, up until the present. The Board will allow the additional counts, but the time frame will be limited. The Board acknowledges that the stipulation is vacated by the Fifth District's action, but believes that the Intervenor should be allowed to amend only as to violations and the time period prior to the time she attempted to intervene. The Board notes that she is free to bring a separate enforcement action for violations she wishes to allege since that time. Thus, Granite City's motion to dismiss is denied and the motion to strike is granted in part.

IT IS SO ORDERED.

Board Members D. Anderson and J. Dumelle concurred.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 2ND day of September, 1982 by a vote of 5-0.


 Christan L. Moffett, Clerk
 Illinois Pollution Control Board