ILLINOIS POLLUTION CONTROL BOARD July 19, 1973

PEOPLE OF THE STATE OF ILLINOIS)))	#73 - 252
V •))	"''
D. A. STUART OIL COMPANY, LTD., a foreign corporation)	

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

Motion to strike and dismiss the proceeding has been filed by Respondent, alleging the unconstitutionality of the Board's power to assess penalties, the characterization of the proceeding as a criminal action, the unconstitutionality of the statute and particularly Section 31 thereof, the absence of provision for a jury trial and the insufficiency in law of the complaint.

Respondent also contends that the proceeding is barred by virtue of prior adjudication based on an injunction proceeding filed in the Circuit Court of Cook County, Case No. 73 CH 1788, in which the injunction action was dismissed with leave granted the Agency to file an amended complaint within 28 days. The Agency did not file a new complaint in the court proceeding, but did file the instant complaint before the Board. On July 5, 1973, the Circuit Court proceeding was dismissed. Respondent contends that the foregoing sequence of events bars the present action on the doctrine of res judicata.

We find all of Respondent's contentions wholly lacking in merit and deny the motion to strike and dismiss.

We are aware of the conflicting opinions in the Appellate Courts of Illinois with respect to the Board's power of assessing a penalty, but will continue to carry out our statutory mandate until directed otherwise by the proper authority. The instant proceeding is not a criminal action. Neither the statute nor the complaint filed herein are vague or indefinite or result in the denial of due process to Respondent. We have previously held that a jury trial is not appropriate in matters heard by the Board under the Environmental Protection Act. We do not believe the complaint filed herein is insufficient in law for reasons alleged by Respondent, nor do we believe that the sequence of events alluded to in the Circuit Court constitute res judicata as to the proceeding presently before the Board.

The motion to strike and dismiss is denied.

IT IS SO ORDERED.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the above Order was adopted on the day of July, 1973, by a vote of 4 to 1.