

ILLINOIS POLLUTION CONTROL BOARD
May 15, 1997

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	
)	
AMSTED INDUSTRIES, INC., a Delaware)	
corporation d/b/a GRIFFIN WHEEL)	PCB 97-38
COMPANY; L.E. SWIDERSKI d/b/a)	(Enforcement - Land)
GRIFFIN WHEEL COMPANY,)	
HORSEHEAD RESOURCE DEVELOPMENT)	
COMPANY, INC., a Delaware corporation,)	
and HELLMAN TRUCKING COMPANY,)	
INC., an Iowa corporation,)	
)	
Respondents.)	
)	

ORDER OF THE BOARD (by J. Yi):

This matter comes before the Board pursuant to four filings by the parties. On April 24, 1997, the Illinois Attorney General, on behalf of the People of the State of Illinois and the Illinois Environmental Protection Agency (Agency) filed two motions. In the first, the complainant requests the Board to voluntarily dismiss the action without prejudice as to respondents Amsted Industries, Inc. (Amsted), a Delaware corporation d/b/a Griffin Wheel Company, L.E. Swiderski d/b/a Griffin Wheel Company; and Horsehead Resource Development Company, Inc. (Horsehead), a Delaware corporation. In the second, the complainant proposes to settle with respondent Hellman Trucking Company, Inc. (Hellman), an Iowa corporation, and requests the Board to waive the hearing requirement pursuant to Section 31(c)(1) of the Environmental Protection Act (Act). (415 ILCS 5/31(c)(1)(1996).) On May 5, 1997, Horsehead filed an objection to complainant's voluntary motion to dismiss without prejudice. Finally, on May 9, 1997, complainant filed a motion for leave to file a reply to Horsehead's objection.

Today the Board reserves ruling on complainant's motion to dismiss. Additionally, the Board reserves ruling on complainant's and Hellman's motion to waive hearing requirements, but orders publication of notice of the proposed settlement as required by Section 31(c)(2) of the Act. (415 ILCS 5/31(c)(2)(1996).) The Board will address complainant's motion for leave to file a reply to Horsehead's objection to complainant's motion to dismiss. For the reasons stated below the Board grants complainant's motion for leave to file a reply.

PROCEDURAL HISTORY

On August 22, 1996, the complainant filed a formal complaint naming as respondents Amsted, Hellman and Horsehead pursuant to Section 31 of the Act. (415 ILCS 5/31.) The complaint alleges that the respondent Amsted violated 35 Ill. Adm. Code 809.301 by failing to complete and deliver a completed manifest to a hauler who held a valid special waste hauling permit; that Hellman violated 35 Ill. Adm. Code 809.201 and Section 21(g)(1) and (2) of the Act by shipping special waste without a current and valid permit; and that Horsehead violated 35 Ill. Adm. Code 809.302(a) and Section 21(d)(2) of the Act by accepting special waste without a signed manifest. (415 ILCS 5/21(g) (1) and (2) and 21(d)(2).)

On September 9, 1996 respondents Horsehead, Amsted, and Hellman filed motions to dismiss.¹ In the motion to dismiss, the respondents claim that complainant failed to meet the notice requirements of Section 31(d) of the Act prior to filing the complaint.² (415 ILCS 5/31(d).)

On September 16, 1996, the complainant filed a motion to defer ruling on respondents' motions to dismiss. The complainant stated that the parties were engaged in discussions concerning a possible settlement of this matter. Complainant proposed to file a joint status report in 30 to 45 days describing the progress. Complainant also maintained that respondents' counsels had stated that they have no objection in granting this motion.

On November 8, 1996, the parties filed a joint status report. The joint status report indicated the parties were negotiating a settlement in this matter. The parties requested leave to file another status report in 30 to 60 days and the complainant requested the Board to continue to defer ruling on respondents' motion to dismiss.

MOTION TO WAIVE HEARING REQUIREMENT

Complainant and Hellman request the Board to waive the hearing requirement of Section 31(c)(1) of the Act because the parties reached a stipulated settlement agreement which was accompanied by the motion to waive hearing requirement. Section 31(c)(2) of the Act provides that whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing. The Board is required to cause notice of the stipulation, proposal and request for relief to be published, unless the Board, in its discretion, concludes that a hearing is necessary. The notice is required to include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board will deny the request for relief from a hearing and hold a hearing.

MOTION FOR LEAVE TO FILE A REPLY

¹ Horsehead filed a separate motion to dismiss and the remaining respondents joined in one motion.

² Section 31(d) of the Act has recently been amended by P.A. 89-596, eff. August 1, 1996.

As stated above complainant filed a motion to voluntarily dismiss, without prejudice, as to both Horsehead and Amsted. Complainant states in its motion that it desires to withdraw the complaint and re-file a complaint alleging the same violations against the remaining respondents. Complainant asserts that a re-filed complaint would cure deficiencies of the notice requirements of Section 31(d) of the Act which respondents have alleged complainant had originally failed to meet. In its objection to complainant's motion to dismiss, Horsehead states that complainant cannot cure the notice deficiencies of Section 31(d) of the Act because of a change in law that modified the notice requirements. Therefore, Horsehead concludes that this matter can only be dismissed with prejudice.

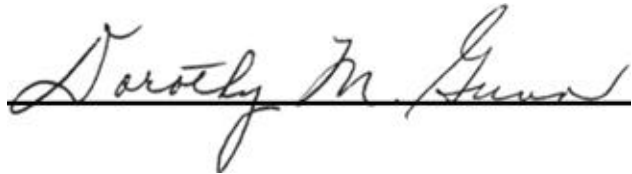
The Board grants complainant 30 days to file a reply to Horsehead's objection. The Board finds that a reply from the complainant would aid the Board in making a determination. Therefore complainant is to file a reply on or before June 16, 1997.

CONCLUSION

The Board grants complainant until June 16, 1997 to file a reply to Horsehead's objection. The Board reserves ruling on complainant's motion to dismiss and on complainant's and Hellman's motion to waive hearing requirements, but orders publication of notice of the proposed settlement as required by Section 31(c)(2) of the Act.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 15th day of May, 1997, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board