

ILLINOIS POLLUTION CONTROL BOARD

April 17, 1997

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	PCB 97-130
v.)	(Enforcement - Air)
)	
BIG O, INC., an Illinois corporation,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on a March 19, 1997 motion to strike respondent s alleged affirmative defenses filed by complainant (Motion). The complaint was filed on January 31, 1997; the response was filed on February 28, 1997 in which respondent asserted that a complaint filed two and a half years after the alleged violations occurred is barred by laches. Respondent also asserted that it adequately notified the Environmental Protection Agency of the demolition. Complainant argues generally that respondent s assertion that Counts I, II and III are barred by the doctrine of laches is erroneous. Complainant further argues that respondent s other affirmative defenses are insufficiently pled and therefore should be dismissed. Respondent, Big O, Inc. (Big O), did not file a response to the motion to strike.

Complainant contends that, absent extraordinary circumstances, the doctrine of laches cannot be asserted against the state in actions involving public rights. Complainant argues that the right to a clean environment is a substantial public interest, and since the Attorney General is attempting to protect that right, and there are no extraordinary circumstances in this matter, Big O s affirmative defense of laches is insufficient as a matter of law and should be stricken. (Motion at 2-4.)

Laches is an equitable doctrine which precludes the assertion of a claim by a party whose unreasonable delay in raising such claim has prejudiced the opposing party. (Tully v. Illinois, 143 Ill.2d 425, 432, 574 N.#.2d 659 (1991).) However, the doctrine of laches may not be asserted against the state in actions involving public rights, under usual circumstances. Hickey v. Illinois Central R.R. Co., 35 Ill.2d 427, 220 N.E.2d 415 (1st Dist. 1966), cert. denied, 386 U.S. 934 (1967), reh g denied, 386 U.S. 1000 (1967).) In addition, the Board has previously held that the equitable doctrine of laches generally does not apply to enforcement actions brought under the Illinois Environmental Protection Act (Act). (People of the State of Illinois v. Environmental Control and Abatement, Inc., (January 4, 1996) PCB 95-170; City of Des Plaines, Gail Papasteriadis and Gabriel and Linda Gulo v. Solid Waste Agency of Northern Cook County, (May 20, 1993) PCB 92-127.) In assessing the period in which claims will be barred by laches, equity follows the law, and generally courts of equity will adopt the period of limitations established by statute. (Beynon Building Corp. v. National Guardian Life Ins. Co., 118 Ill. App. 3d 754, 455 N.E.2d 246, 253 (2d Dist. 1983). Thus, if

the right to bring a lawsuit is not barred by the statute of limitations, unless conduct or special circumstances make it inequitable to grant relief, then the equitable doctrine of laches does not bar a lawsuit either. (Id.)

The Board finds that complainant brought this enforcement action pursuant to Section 31 of the Act which does not provide for a specific statutory limitation period within which a complaint must be filed. Also Big O has not shown where complainant has unreasonably delayed bringing this action to the prejudice of Big O. Nor has Big O demonstrated special or unusual circumstances to compel the Board to depart from the general rule. Therefore, the Board finds that the doctrine of laches does not apply in this matter; as such, the Board strikes the first affirmative defense in Counts I and II, as well as the affirmative defense in Count III.

Complainant also argues that Big O's other affirmative defenses as to Counts I and II should be stricken because they fail to raise an adequate defense. The Board finds that these affirmative defenses generally involve facts and defenses which Big O can present at hearing. Therefore, the Board denies complainant's motion to strike as to Big O's other affirmative defenses in Counts I and II.

In sum, the Board grants complainant's motion to strike Big O's affirmative defense of laches in Counts I, II and III. The Board denies complainant's motion to strike Big O's other affirmative defenses in Counts I and II. This matter shall proceed to hearing.

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 _____ day of _____, 1997, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board