ILLINOIS POLLUTION CONTROL BOARD
May 17, 2001

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 01-76
	)	(Enforcement – Air)
JOHN CRANE, INC., an Illinois corporation,	)	
	)	
Respondent.	)	

CONCURRING OPINION (by E.Z. Kezelis, R.C. Flemal):

We respectfully concur. Our concern is with respect to the second affirmative defense alleged by John Crane, Inc. (Crane), in which Crane alleges that complainant's claims are barred by the limitations set forth in Section 31 of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq*. (1998)).

We agree with the majority's conclusion that Section 31(a)(1) is not a statute of limitations. See People v. Crane (May 17, 2001), PCB 01-76, slip op. at 5. We also agree with the majority's findings that compliance with Section 31(a)(1) is not a jurisdictional prerequisite to the filing of a complaint with the Board. Furthermore, we agree that the General Assembly did not intend to weaken the Act when it adopted this section, and that Section 31(a)(1) was instead designed to encourage negotiated resolutions before referral to prosecutorial authorities. See Crane, PCB 01-76, slip op. at 7.

Our concern stems from the fact that Section 31 as a whole imposes a tightly woven sequence of time-driven obligations directed at facilitating settlement before prosecution commences. These obligations are imposed on the Illinois Environmental Protection Agency (Agency) and on the putative respondent; they must be met or, in some instances, waived, before the Agency can make a referral for prosecution. The legislative history of Section 31 and the Board's prior decisions examining its history make this clear. See, *e.g.*, People v. Heuermann (September 18, 1997), PCB 97-92, slip op. at 2; People v. Eagle-Picher-Boge, L.L.C. (July 22, 1999), PCB 99-152.

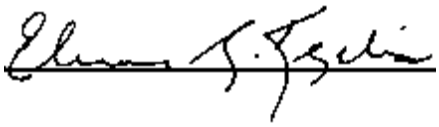
The majority's analysis adopts a new standard today for weighing the significance of the initial triggering event in the Section 31 negotiation process. It compares and contrasts "directory" and "mandatory" obligations to conclude that the initial trigger in Section 31(a)(1) - that within 180 days of becoming aware of an alleged violation, the Agency must serve written notice on the putative respondent - is merely "directory". Crane, PCB 01-76, slip op. at 7. Because we believe that Section 31 as a whole guarantees putative respondents the right

to a process, we are concerned that labeling its initial trigger as merely "directory" may be misconstrued.

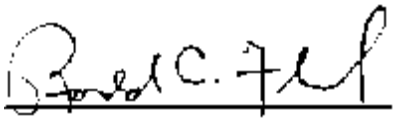
Among other things, the majority opinion and this concurrence should serve as a strong reminder to the Agency and to putative respondents that Section 31 as a whole must be honored, and that in general, deadlines must be vigilantly met. The fact that the initial statutory trigger in Section 31(a)(1) is less than crystalline sharp does not render the rest of Section 31 any less potent. Section 31 was not designed to elicit examination of the internal factual and legal hurdles that various levels of Agency personnel must satisfy for the Agency to reach the precise point of "becoming aware of an alleged violation." See 415 ILCS 5/31 (1998). Instead, Section 31 was designed to ensure that the negotiation process be afforded before referral.

By reaching the conclusion it does, the majority's opinion does not "turn a blind eye" to this process; rather, the majority now assures that it shall be the process, not the trigger, that commands the outcome. See Heuermann, PCB 97-92, slip op. at 7. Based on the record before us, it is clear that the Section 31 process was provided to Crane, and that Crane availed itself of it.

For these reasons, we respectfully concur in today's majority opinion.

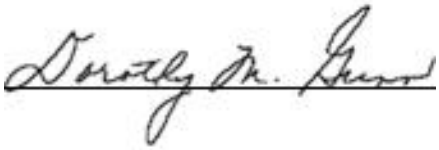


Elena Z. Kezelis
Board Member



Ronald C. Flemal
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above concurring opinion was submitted on the 17th day of May 2001.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board