

ILLINOIS POLLUTION CONTROL BOARD

August 1, 1996

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB 96-264  
) (Enforcement - RCRA)  
)  
AMERICAN WASTE PROCESSING, LTD., )  
an Illinois Corporation, )  
)  
Respondent. )

ORDER OF THE BOARD (by E. Dunham):

On July 12, 1996, American Waste Processing (American Waste) filed a "Motion to Dismiss in Lieu of Answer".<sup>1</sup> The Illinois Environmental Protection Agency (Agency) filed a response to the motion on July 22, 1996.

American Waste asserts that the matters alleged in the complaint occurred between October 21, 1982 and September 29, 1995, when respondent was issued a Part B permit for its facility. American Waste maintains that these matters were compromised and settled and all alleged violations, which respondent denies, were merged into the permit. American Waste contends that this action is a violation of the settlement and compromise. The United States Environmental Protection Agency in an April 18, 1995 letter to American Waste recognized that all previous violations have been resolved. American Waste contends that the Agency has compromised and waived the issues it now seeks to raise in the complaint.

The Agency characterizes the motion as arguing that the doctrines of res judicata and equitable estoppel bar the complaint. The Agency maintains that the issuance of the Part B permit did not absolve respondent of any past violations. The Agency argues that American Waste has not plead sufficient facts to establish equitable estoppel. In addition, the Agency contends that the doctrine of equitable estoppel is not to be applied to public bodies except in compelling circumstances. (*Tri-County Landfill Co. v. IPCB*, 41 Ill. App. 3d 249, 255, 353 N.E. 2d 316, 322 (1976)(citations omitted).) The Agency asserts that the doctrine of res judicata is not applicable because the alleged violations have not been previously settled or otherwise purged. The Agency further asserts that respondent is incorrect in asserting that the complaint is untimely because the complaint contains only past violations.

The Board hereby denies respondent's motion to dismiss. Respondent has not provided any proof of settlement with the Agency and its motion to dismiss was not supported by

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<sup>1</sup> The Notice of Filing states that "Respondent's Answer to Complaint's Complaint" is being filed.

affidavit. While American Waste maintains that the alleged violations were compromised and settled, it has not provided any documentation of the terms of that agreement. The issuance of a Part B permit by itself or subsequent compliance with the regulations does not impede the Agency from bringing an enforcement action for past violations.

Respondent's motion to dismiss is hereby denied. Respondent is granted leave of the Board to file its answer to the complaint on or before August 30, 1996

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 \_\_\_\_\_, 1996, by a vote of \_\_\_\_\_.

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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board