

ILLINOIS POLLUTION CONTROL BOARD
October 17, 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 C. A. Manning):

This matter comes before the Board on a motion to reconsider filed on September 4, 1996 by American Waste Processing, Ltd. (American Waste). American Waste requests reconsideration of the Board's August 1, 1996 order denying its motion to dismiss. The Illinois Environmental Protection Agency (Agency) filed a response to the motion for reconsideration on September 19, 1996. On September 26, 1996, American Waste filed a motion to strike the affidavit of Mark Schollenberger attached to complainant's response pleading. The Agency filed its reply to the motion to strike on October 7, 1996.

MOTION TO STRIKE AFFIDAVIT

American Waste argues that the affidavit of Mark Schollenberger, a permit reviewer with the Agency, should be stricken because the affidavit does not meet the requirements of Illinois Supreme Court Rule 191. Specifically, American Waste contends that the affidavit should be stricken for the following reasons: 1) it does not state that it is made on personal knowledge of the affiant; 2) is based on speculation; 3) does not specify a time period for Mark Schollenberger's involvement with the permit review; and 4) does not exclude that someone other than the affiant made the alleged representations to the respondent.

Illinois Supreme Court Rule 191 requires that affidavits:

be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of all papers upon which the affidavit relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant if sworn as a witness, can testify competently thereto.

The Board finds that the affidavit sufficiently satisfies the requirements of Illinois Supreme Court Rule 191. Therefore, the Board denies the motion to strike the affidavit. Specifically, the Board finds that the affidavit is based on the recollection of the affiant.

Moreover, the Board notes that respondent mostly challenges the factual basis of the affidavit rather than the technical aspects.

MOTION TO RECONSIDER

In its motion for reconsideration, American Waste submits the affidavit of Joseph Strosnik, Director of Corporate Development for American Waste. American Waste states that it was unable to attach the affidavit to the original motion due to time constraints that prohibited it from being able to review the affidavit for accuracy. Additionally, American Waste reasserts its arguments of equitable estoppel and res judicata. American Waste also asserts that the complaint is contrary to Illinois public policy of bringing actions before respondent has had an opportunity to correct or compromise the alleged violation. As evidence of its argument, American Waste cites to the August 1, 1996 amendments to Section 31 of the Environmental Protection Act (Act). (P.A. 89-596.) American Waste further contends that the Agency's attempt to enforce federal law is unconstitutional.

In Citizens Against Regional Landfill v. County Board of Whiteside (March 11, 1993), PCB 93-156, the Board stated that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." (Korogluyan v. Chicago Title & Trust Co., 213 Ill.App.3d 622, 572 N.E.2d 1154, 1158 (1st Dist. 1992).)

In addition to presenting a change in the law, American Waste also attempts to reargue its position in the motion for reconsideration. Any new evidence presented in the motion for reconsideration was available to American Waste at the time that the motion to dismiss was filed by American Waste. Therefore, the Board will not reconsider its order since the evidence presented by American Waste in the motion for reconsideration is not newly discovered evidence. Further, the amendments to Section 31(a) of the Act effective August 1, 1996, apply prospectively and, therefore, do not apply to this action. The Board finds no reason to review its previous decision and denies American Waste's motion for reconsideration.

IT IS SO ORDERED.

Board Member K.M. Hennessey abstained.

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 _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board