

ILLINOIS POLLUTION CONTROL BOARD  
December 7, 1995

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 BELL SPORTS, INC. a California )  
 Corporation, AND WASTE HAULING )  
 LANDFILL, INC., an Illinois )  
 Corporation, AND WASTE HAULING, )  
 INC., an Illinois Corporation, )  
 )  
 Respondents. )

PCB 95-91  
(Enforcement - Land)

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 WASTE HAULING LANDFILL, INC., )  
 an Illinois Corporation, )  
 AND WASTE HAULING, INC., an )  
 Illinois Corporation, )  
 )  
 Counterclaimants, )  
 )  
 v. )  
 )  
 BELL SPORTS, INC. a California )  
 Corporation, )  
 )  
 Counterrespondent. )

DISSENTING OPINION (by J. Theodore Meyer):

I concur in part and dissent in part from the majority order in this matter. I agree that Bell Sports' Motion to Dismiss must be denied because Waste Hauling Landfill (WHL) and Waste Hauling, Inc. (WHI), as private entities, clearly have the right to file an enforcement action against Bell Sports. It is also appropriate to consolidate this counterclaim with the State-initiated enforcement action because the claims involve the same site and same parties.

I disagree with the majority in its denial of WHL's and WHI's Motion to Dismiss. I continue to hold that the doctrine of *res judicata* applies in this matter. The doctrine of *res judicata* prohibits a court from ignoring an action pending in another court when that action involves the same parties on the same subject. (First Nat. Bank of Skokie v. Puetz, 124 Ill.App.3d 240, 464 N.E.2d 704 (1st Dist. 1984).) *Res judicata* also prevents relitigation of those issues actually raised in the first proceeding, as well as any issue that might have been raised. (Rein v. David A. Noyes and Company, 271 Ill.App.3d 768, 649 N.E.2d 64 (2nd Dist. 1995) (Emphasis added).) The proper test

to determine the application of the doctrine is whether the actions are based upon a common core of operative facts, or whether the same evidence would sustain both actions. (Horton v. Caterpillar, Inc., 260 Ill.App.3d 150, 632 N.E.2d 1061 (3rd Dist. 1994).)

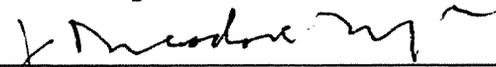
In the instant matter, the Attorney General's office chose to bring an action in circuit court on January 23, 1992 alleging violations of the Environmental Protection Act, the Board's Waste Disposal Regulations, and certain sections of the Administrative Code. The complaint encompasses violations which have been ongoing since 1987 and which pertain to permit violations and lack of closure and post-closure plans. (See People of the State of Illinois v. Waste Hauling Landfill, Inc., 92-CH-5 at Exhibit "A" of Respondent's Motion to Dismiss.)

On March 14, 1995, the Attorney General filed its complaint with the Board, alleging hazardous waste violations based upon evidence seized pursuant to a search warrant obtained during the prosecution of the above-mentioned case. (Respondent's Motion to Dismiss, p.2.) These alleged violations involve the same site, a common core of operative facts, and parties whose interests are sufficiently similar even though they differ in name and number, thus satisfying the "same parties" requirement. (See Skipper Marine Electronics, Inc. v. Sibernet Marine Products, 120 Ill.App.3d 692, 558 N.E.2d 324 (1st Dist. 1990).) Although additional evidence may have been necessary in order to file hazardous waste violations against the parties, I find it compelling that this evidence was found pursuant to a search warrant obtained during the prosecution of the case before the circuit court.

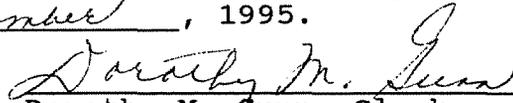
Since all prongs of the *res judicata* test have been met, the Board must decline taking this case, even if the complaint before the circuit court does not raise the issue of hazardous waste violations. The state will in no way be prejudiced by dismissal of its action before the Board because the alleged hazardous waste violations relate back to the case pending before circuit court, thus allowing for an amended complaint.

Additionally, complainant should be estopped from arguing that it can bring a cause of action before the Board when it had previously argued before the circuit court that the circuit court, rather than the Board, was the proper and most appropriate forum.

For these reasons, I respectfully dissent

  
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 J. Theodore Meyer  
 Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was filed on the 31<sup>st</sup> day of December, 1995.

  
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Dorothy M. Gunn, Clerk  
Illiois Pollution Control Board