

ILLINOIS POLLUTION CONTROL BOARD  
July 16, 1987

IN THE MATTER OF: )  
 )  
FITZ-MAR LANDFILL, INC., ) AC 87-46  
 ) IEPA NO. 8382 AC  
Respondent. )

ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon a May 26, 1987, Motion to Dismiss Administrative Citation filed by the Respondent, Fitz-Mar Landfill, Inc. (Fitz-Mar). Fitz-Mar asserts that because of concurrent actions pending before the Board (PCB 86-160 and PCB AC 87-27) and before the Circuit Court of Cook County (No. 87-CH-1909), all involving the same landfill, it would be an unreasonable economic hardship and fundamentally unfair to require it to litigate all of the administrative and legal proceedings because those proceedings involve the same issues and facts.

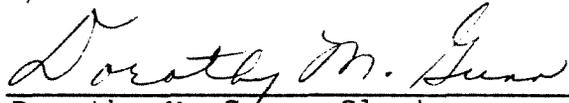
On June 29, 1987, the Illinois Environmental Protection Agency (Agency) opposed Fitz-Mar's motion by stating that these actions do not involve the same issues and facts. This proceeding, AC 87-46, involves the allegation that on March 24, 1987, Fitz-Mar had uncovered refuse remaining from a previous operating day. On the other hand, PCB 86-160 is an enforcement action that was filed September 30, 1986, and has not been amended to include the March 24, 1987, violation. AC 87-27 is an administrative citation based on an alleged violation occurring on February 4, 1987. The Circuit Court action, 87-CH-1909, is a two-count complaint seeking injunctive and other relief for (1) engaging in a pattern and practice of continuing the depositing of refuse in unpermitted portions of the Fitz-Mar Landfill, and (2) engaging in a pattern and practice of collecting and pumping leachate and contaminants into waters within and without the boundaries of its landfill site.

The Board agrees that these actions do not involve the same precise issues and facts. This proceeding, AC 87-46, involves the allegation that on a specific date, March 24, 1987, Fitz-Mar had uncovered refuse remaining from a previous operating day in violation of Section 21(p)(5) of the Illinois Environmental Protection Act (Act). The other Board proceedings, PCB 86-160 and AC 87-27, allege violations on different dates and do not, therefore, preclude the finding of a violation in this proceeding, AC 87-46. It is conceivable that the Circuit Court action may involve similar issues and facts. That action,

however, seeks injunctive relief as well as penalties for multiple days of violations. In the enforcement of the Act, the Board and the Circuit Courts have different, but concurrent roles. A notable difference lies in the form of relief requested. The Act does not give the Board the power to grant injunctions. But the Act does grant to the Board the authority to hear administrative citation cases. Thus, the Board's jurisdiction in this proceeding is proper. It is no defense that litigation of more than one action may cause economic hardship, and further, it is not fundamentally unfair. Fitz-Mar's motion to dismiss is denied.

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 16<sup>th</sup> day of July, 1987 by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board