

ILLINOIS POLLUTION CONTROL BOARD  
October 10, 1985

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 85-101  
 )  
CAPITAL ENGINEERING & MFG. CO., )  
 )  
Respondent. )

ORDER OF THE BOARD (by J. Anderson):

On September 13, 1985, the Agency moved the Board to strike Capital's third, fourth and fifth affirmative defenses--estoppel, laches, and the running of the statute of limitations--on the grounds of legal insufficiency of the pleadings. Capital's September 25 response in opposition asserts that the defenses are well pleaded, but alternatively suggests that leave should be granted to amend the answer.

The Agency's motion is granted in part: the fifth affirmative defense, the statute of limitations, is stricken. The Board has consistently held that the statute of limitations does not bar enforcement actions under the Act. See, e.g., Landfill Emergency Action Committee v. McHenry Sanitary Landfill And Recycling Center, Inc., PCB 85-9, Order of March 22, 1985, citing Pielet Bros. Trading, Inc. v. IEPA and (PCB), 110 Ill. App. 3d 752, 442 N.E. 2d 1374 (1982). As to laches and estoppel, the Board agrees with Capital that determinations on these issues involve mixed questions of law and fact. The Board notes that hearing in this matter is set for November 21, 1985. To insure an efficient hearing and to minimize surprise, Capital is granted leave through October 28, 1985 to file an amended answer setting forth the factual bases for these defenses, which shall be addressed at hearing. In the event that any necessary discovery cannot be completed prior to that date, the Hearing Officer shall grant the shortest possible continuance.

IT IS SO ORDERED.

J. D. Dumelle dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 10<sup>th</sup> day of October, 1985, by a vote of 6-0.

*Dorothy M. Gunn*  
-----  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board