

ILLINOIS POLLUTION CONTROL BOARD
March 22, 1985

LANDFILL EMERGENCY ACTION)
COMMITTEE,)
)
Complainant,)
)
v.) PCB 85-9
)
MCHENRY COUNTY SANITARY LANDFILL)
AND RECYCLING CENTER, INC.,)
)
Respondent.)

ORDER OF THE BOARD (by J. Anderson):

This complaint was filed by the Landfill Emergency Action Committee (Committee) on January 23, 1985. The McHenry County Sanitary Landfill and Recycling Center, Inc. (The Landfill) moved to dismiss the Complaint on February 4, 1985, for reasons argued in memoranda filed February 4 and February 11. The Committee filed a response in opposition on February 26, to which the Landfill filed a reply on March 6, 1985.

The Landfill's first contention is that the complaint has not been brought in good faith and is therefore frivolous within the meaning of Section 31(b) of the Environmental Protection Act and 35 Ill. Adm. Code 103.124(G). The Landfill asserts that the complaint has been brought for "political rather than environmental reasons", to "create a prosecution that can be dragged before the McHenry County Board" in an ongoing site location suitability approval proceeding pursuant to the Landfill's expansion request (Am. Memo. of February 11, 1984, p. 1-2). In support of this proposition, the Landfill notes the Agency's failure to prosecute for past violations as documented in inspection reports.

The Board agrees with the Committee that absence of Agency prosecution is no indicia of the merits of a particular complaint, given the Agency's need to allocate its scarce resources. Any question of improper usage of this enforcement proceeding in an SB 172 proceeding is more appropriately addressed and argued in the SB 172 proceeding. The Board does not find the allegations of this complaint to be frivolous.

The Landfill next notes that the complaint contains claims extending back to 1974. It argues that the majority of these claims are barred by the statute of limitations. The Landfill argues that the two-year statute of limitations of Ill. Rev. Stat. 1983, ch. 110 13-202 "Personal Injury-Penalty" is applicable here, since the plaintiff is a non-governmental entity. It also suggests that the five-year limit of Paragraph 13-205 would apply to a governmental entity.

The Board rejects this contention. In Pielet Bros. Trading, Inc. v. IEPA and IPCB, 110 Ill. App. 3d 752, 442 N.E. 2d 1374 (1982), the Appellate Court agreed with the Board's conclusion that the two-year limitation period (since renumbered from Ill. Rev. Stat. 1979, ch. 83, par. 15) did not apply to actions brought by the Agency. In the Board's ruling in Pielet Bros. Trading, Inc. v. IEPA and IPCB, PCB 80-185, 44 PCB 219, 223, December 17, 1981, the Board had found that "the [Environmental Protection] Act does not expressly limit any individual's cause of action to enforce the right to a clean environment, and that Section 15 does not expressly limit the right of a state agency to vindicate a public right."

On review, the Court's analysis was that:

"Unless the terms of a Statute of Limitations expressly include the State, county, municipality or other governmental agencies, the statute, so far as public rights are concerned, as distinguished from private and local rights, is inapplicable to them. (Clare v. Bell (1941), 378 Ill. 128, 130-31, 37 N.E. 2d 812, 814.) The question is whether the State (or its agency or subdivision) is asserting public rights on behalf of all the people of the State or private rights on behalf of a limited group. (In re Bird's Estate (1951), 410 Ill. 390, 394, 102 N.E. 2d 329, 331.) Here, the Agency argues, and we agree, that what the Agency seeks is to protect the public's right to a clean environment. Moreover, not only does section 14 of the Limitations Act fail to expressly include the State or the Agency, but section 14 is one of a group of sections designated by the legislature as pertaining to "Personal Actions." See People ex rel. Stubblefield v. City of West Frankfort (4th Dist. 1950), 340 Ill. App. 443, 447, 92 N.E. 2d 531, 533.

* * *

In conclusion, we hold that the Board did not err in determining that section 14 of the Limitations Act did not apply to the instant action."

Although the Committee is not a state agency, the Board cannot find that the two-year limitation applies to this action. The Board finds that the Committee, acting in the nature of a "private attorney general", is asserting the public's right to a clean environment on behalf of all of the people of the state, rather than private rights on behalf of a limited group. Enforcement based on Agency inspection documents buttresses this conclusion in the case. Finally, the Board further does not find the five-year limitation of Paragraph 13-205 applicable to this action, since a) it too is a limitation on "personal actions" as is Paragraph 13-202, and b) the Pielet court did not apply (or discuss) the identical predecessor limitation section in that action.

The Landfill's final argument is that all claims are stale, since the most recent violation alleged is some 18 months old and no continuing violations are alleged. It also argues that the plaintiff should be estopped from proceeding, on the grounds that the Committee had previously failed to examine inspection reports and to file a complaint. As a consequence, the Landfill asserts that it was entitled to rely on the fact that its performance was satisfactory to the community.

The Board will not dismiss the complaint on the basis of stale claims or estoppel. The Board has found that estoppel, waiver or laches would not bar the Agency itself from taking enforcement action concerning "stale" claims, e.g. IEPA v. City of Moline, PCB 82-154, September 6, 1984, p. 2-3; even if estoppel were to attach to the Agency, no convincing argument has been presented concerning affirmative misconduct of the Committee which would give rise to estoppel.

The 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 22nd day of March, 1985 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board