

ILLINOIS POLLUTION CONTROL BOARD
November 8, 1984

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 83-163
)
LARRY BITTLE, d/b/a/ Southern)
Recycling, a dissolved Illinois)
corporation, WILLIAM GAMBER,)
LEONARD C. BITTLE, and)
J. MAX MITCHELL,)
)
Respondents.)

ORDER OF THE BOARD (by B. Forcade):

On October 18, 1984, Respondents Larry Bittle, William Gamber, and Leonard C. Bittle filed a motion to dismiss this enforcement action on the basis that the Board lacks jurisdiction because suit was filed more than two years after the dissolution of Southern Recycling. The Attorney General responded, on October 23, 1984, that the respondents were being sued personally and not as officers and shareholders of the dissolved corporation and suit was therefore not barred by Ch. 32, Par. 157.94, Ill. Rev. Stat. (1983). The respondents filed a response in support of their motion to dismiss, on October 29, 1984, asserting that the claims against the respondents arose out of their connection with Southern Recycling and not as individuals. Due to delays in the mails, both the motion and the response in support of the motion reached the Board on October 29, 1984.

This is the third motion to dismiss presented to Board by the respondents. The basis for the present motion is lack of subject matter jurisdiction. The issue of jurisdiction can be raised at any time under Illinois law. However, there are not sufficient undisputed facts at this point for the Board to determine whether there is proper jurisdiction or not. The best course to follow is to proceed to hearing where the various factual allegations in the complaint can be developed as well as the factual basis for the arguments for and against jurisdiction. The respondents may then raise the jurisdictional issue after the record is complete. The motion to dismiss is denied.

IT IS SO ORDERED.

Board Member J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 8th day of November, 1984 by a vote of 5-1.

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